Consumer Protection and Education in a Restructured Electric Industry

A Report of the Direct Access Working Group

In Response to the
California Public Utilities Commission
Decision 96-03-022
in
R. 94-04-031
I. 94-04-032

October 30, 1996

Consumer Protection and Education in a Restructured Electric Industry

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Chapter 1.
Introduction and Executive Summary

1.1 Creating This Report

On September 12, 1996, following the release of the August 30 Report to the CPUC of the Direct Access Working Group (DAWG), the entire DAWG held a meeting in Oakland to consider its next steps. The most obvious and compelling next step was to complete its report on Consumer Protection and Education, which the Commission had ordered in Decision 96-03-022 to be delivered on October 30. Parties to the original Subgroup D of DAWG, which focused on Consumer Protection and Education, were joined by several other DAWG participants in this effort, and held a series of meetings to develop the present report.

Most of the topics in this report were already covered to some extent in the August 30 Report, but nearly all topics stood to benefit from further work. In addition, AB 1890 was signed into law after the August 30 Report went to print, so there was a need to revise some material based on the contents of that legislation.

At the same September 12 meeting of the entire DAWG, the process for review and completion of this report was decided. It was decided that an intermediate version would not be sent to the entire DAWG participant list nor the Commission's Restructuring service list. Instead, a letter was sent to the parties on those lists informing them of the intention to release a draft on October 8, of which they would be sent a copy upon request. Following the October 8 draft, parties would have until October 15 to send comments or additional material to designated lead authors of the various chapters. Another full DAWG meeting was called for October 22 in San Diego, to allow a final opportunity for interested parties to review the latest changes and make comments. New drafts dated 10/22 were available at that meeting.

Following the October 22 meeting, the lead chapter authors incorporated the final comments and dealt with any issues that arose at that meeting, and then turned over their chapters to the editor-in-chief for assembly of the final product. The editor-in-chief was selected by consensus among the participants in the process. As was the practice for the August 30 DAWG Report, positions discussed in this report and authorship of specific sections are not attributed to specific parties.

The major contributors to this report were as follows:
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1.2 Key Issues for Commission Decisions

Parties to the DAWG process and the other stakeholder working groups dealing with electric industry restructuring are acutely aware of how rapidly January 1, 1998 is approaching and how much remains to be done to have a well-functioning competitive marketplace for electric service operational on that date. Although we have not chosen to try to create a comprehensive critical path for the implementation of direct access, we have learned much about the interdependencies among different elements of the new structure. We are therefore able to indicate those areas where Commission decisions are needed in the near future so that progress towards the new market may continue at a rate rapid enough to maintain the feasibility of the target date. This section provides a survey of those crucial areas.

1.2.1 Direct Access Program Decisions

By now the Commission is undoubtedly quite familiar with the major direct access issues that require decisions, having had two months of review process including comments and reply comments and a full day's hearing on the subject. We will just mention the three issues that will have the greatest impact on consumer protection and education activities: phase-in of direct access, load profiling for small customers, and access to customer information by competitive retailers.

Phase-in. The content of an effective consumer education program must be shaped by knowledge of which consumers and consumer groups will be eligible for direct access in 1998. Although there are certain messages that need to be conveyed to all consumers regardless of whether they will see new electric service options during the first year, there is also a need for messages that are targeted to those customers who will be eligible for direct access and who therefore need to be able to make good choices for themselves. We may take a modest risk in assuming that large customers can take care of themselves in the new marketplace, but we take an enormous risk in opening the market to small customers without adequately preparing them for "shopping" there successfully. As soon as possible, then, we must know which customers will be eligible in 1998, so that the scope of education and marketing efforts can be fixed.

Load profiling. The ability to use statistical load profiles to estimate the hourly consumption of small customers, instead of requiring interval meters for all direct access contracts, will have large implications for prospective small-customer aggregators and their customers. Electric Service Providers (ESPs) interested in serving small customers will face quite different markets depending on how this decision is made, and some potential providers who have participated in the DAWG have argued that without load profiling small customers become much less economically

attractive. Although most parties support the load profiling concept as a transitional measure pending universal implementation of interval metering, there are sharp differences of opinion regarding how load profiling should be implemented. Meanwhile, consumer education content and timing decisions cannot be made until the Commission decides whether load profiling will be allowed and, if so, how it should be done.

Access to customer information. Decision D. 95-12-063 observed that the playing field for competitive generation would not be level without equal access by all competitors to utility-held customer data bases. The Decision therefore ordered that such access be implemented subject to appropriate protection of customer privacy. The details of implementation are controversial, however, as the August 30 DAWG Report (Chapter 7) and subsequent filings and testimony clearly show. A primary issue is the relative sensitivity of certain basic customer data, specifically customer identification and contact information plus metered electricity consumption for at least one year. To classify this information as sensitive and subject it to a strong consumer consent requirement will reduce the amount of information available to competitive providers. At the same time, to classify it as non-sensitive and subject it to a weaker consent requirement may be detrimental to customer privacy. A Commission position on this issue is essential at this time.

1.2.2 Consumer Education Plan

We have proposed the creation of a Consumer Education Plan (CEP), a comprehensive program that takes a statewide approach to consumer education and maps out strategies, messages, special needs of certain populations, educational media, costs and funding, and many more details. The Commission should review the proposals in Section 5.2 and decide quite soon:

- approximately when consumer education activities should begin;
- which entity or entities will be responsible for developing the CEP;
- whether it will authorize funding for an independent consultant to help create the CEP;
- on what timetable the CEP should be developed;
- funding amounts and sources for developing the CEP; and

2 the timetable for resolving implementation funding issues, so that education can begin well in advance of the start of direct access.

1.2.3 Registration of Electric Service Providers (ESPs)

AB 1890 provides relatively minimal registration requirements for ESPs. Many DAWG parties feel these requirements are too weak, but the group was not able to assess whether AB 1890 gives the Commission leeway to enact stronger requirements. In the very near future the Commission should decide whether it wishes to go beyond AB 1890, to develop stronger registration requirements and to implement some enforcement mechanisms that will deter undesirable business practices by ESPs. If the Commission decides this is a desirable approach,

then it will need to decide which party or parties should draft such requirements and mechanisms, and it may need to develop legislative proposals that would ensure its authority in this area.

1.2.4 Reliable Market Information for Consumers

No one disagrees with the concept that consumers need reliable market information in order to be able to make good choices about electric service contracts and consumption. The key point of disagreement is whether they should get most of that information on their own, through market mechanisms, and rely on public agencies only for general education about the industry and useful tools for evaluating alternatives, or whether they should be aided by a significant programmatic effort that collects and disseminates a wealth of information about prices, terms, conditions and qualities of service options, as well as the track records of the market participants. The Commission should decide soon which way it will lean in this debate, and should designate the entity or entities that will perform whatever level of information gathering and dissemination it deems appropriate, keeping in mind the idea that consumers need a neutral source for market information if that information is to be perceived as trustworthy.

1.2.5 Other Consumer Protection Issues

Market monitoring and oversight**.** These are complex activities that require many decisions about what variables to monitor, how to collect and interpret information, what kinds of data bases to compile, etc. The Commission need not decide all these details now, but it should act promptly to set in motion a process to work out the details of a monitoring and oversight process that must be operational in advance of 1/1/98. At a minimum it must designate who will be responsible for developing the relevant procedures.

Resolution and redress of customer complaints. A fair and efficient procedure needs to be operational by 1/1/98. As in the case of the previous item, the Commission must promptly initiate a process and designate a responsible entity to develop a system that can function efficiently when the market opens.

Third-party verification of change of provider. This anti-slamming provision of AB 1890 gives the CPUC the responsibility of developing a workable mechanism. The process for developing such a mechanism must be initiated without delay.

1.2.6 Restructured Electric Service Education Trust (RESET)

Section 5.4 of this report discusses the need for timely Commission decisions regarding various aspects of the structure and functioning of the RESET, which is the model developed by DAWG parties to fulfill the requirement expressed in D. 95-12-063 to create a new Consumer Education Trust. Clear Commission guidance is needed at this juncture for this concept to move closer to realization.

1.2.7 Funding Issues

Guidance is needed from the Commission regarding funding sources for RESET (see Section 5.4), for a consultant to assist in developing the Consumer Education Plan (see Section 5.2) and for a potentially wide range of education efforts to be conducted by the utilities. In addition, some parties have raised the issue of intervenor funding for consumer advocacy organizations. Until the funding for these functions is resolved, it is difficult for consumer education efforts to progress.

1.3 How This Report is Organized

Following this Introduction and Executive Summary are six additional chapters.

Chapter 2 presents a set of fundamental principles the DAWG parties believe should guide the industry restructuring. Some parties call these a consumer bill of "rights," while others prefer to call them simply "principles." Under either label, they provide guidelines about how we believe consumers should be treated under the new marketplace if that marketplace is to be considered well-functioning, societally efficient and equitable. This chapter is largely taken from Chapter 2 of the August 30 DAWG Report. The set of basic principles has not changed, but some new material has been added in the form of alternative interpretations of the principles and arguments for and against those interpretations.

Chapter 3 describes aspects of market behavior and elements of electric service that may suggest a need for new consumer protection measures. We describe actual abuses that have occurred in other industries and could be applicable here, as well as unique features of electric service that, when opened to diverse unregulated firms, may likely provide opportunities for abuse. Most of this discussion is new since August 30.

Chapter 4 describes the potential institutions and mechanisms of consumer protection, beginning with a non-rigorous review of what AB 1890 says about Commission authority over ESPs, thus updating the corresponding passage in the August 30 Report, Chapter 6. Borrowing heavily from the August 30 Report, Chapter 4 discusses CPUC regulation of competitive local telephone

service as an illustrative example. It then provides some alternative approaches to the principal elements of consumer protection identified by the DAWG parties: registration of ESPs, the right to redress, consumer advocacy and market monitoring.

Chapter 5 deals with consumer education and goes substantially beyond the August 30 Report, Chapter 11, particularly with regard to the Consumer Education Plan (CEP). Borrowed largely from the earlier report is the discussion of the Restructured Electric Service Education Trust (RESET).

Chapter 6 deals with access to customer information. Information access issues were fully treated in Chapter 7 of the August 30 DAWG Report and, in contrast to many other subjects the DAWG addressed, the restructuring bill AB 1890 was silent in this area. Parties to this report therefore felt there was no need to add to the earlier effort. As a result, Chapter 6 of the present report simply refers the reader to the August 30 DAWG Report rather than duplicate material that has already been distributed.

Chapter 7 deals with some implementation issues and is completely new to this report. Its specific concerns are twofold:
- the timely development of registration requirements for ESPs and the implementation of those requirements in time to allow marketing activities well in advance of 1/1/98; and
- the development of a Consumer Education Plan, including the roles of various participants and the required funding, that may be implemented in time to ensure that consumers are prepared to deal with ESP marketing activities when those activities begin.

1.4 Participants in DAWG Subgroup D

Barkovich and Yap
California Energy Commission
California League of Food Processors
California-Nevada Community Action Association
Cellnet Data Systems
Division/Office of Ratepayer Advocate (DRA/ORA)
California Retailers Association
Dept. of Defense
Dept. of Water Resources
Dept. of the Navy
Eastern Pacific Energy Corp.
Enova
Grueneich Resource Advocates
Independent Energy Producers
Los Angeles Dept. of Water and Power

Latino Issues Forum / Greenlining Institute
Metropolitan Water District of Southern California
New Energy Ventures, Inc.
Pacific Gas & Electric (PG&E)
Power Resources
Richard Heath & Associates
Robinsons-May Department Stores
San Diego Gas & Electric (SDG&E)
Sacramento Metropolitan Utility District (SMUD)
Southern California Edison (SCE)
Toward Utility Rate Normalization (TURN)
Utility Consumers Action Network (UCAN)
Western Mobilehome Parkowners Association

Chapter 2. Consumer Principles for Restructuring

The working group attempted to translate the broad policies of D.95-12-063 and the overarching goal of societal economic efficiency into more tangible operational principles so as to provide practical guidance to the restructuring proceedings. Although some parties have referred to these as a "Consumer Bill of Rights," some parties do not agree that these are "rights" and therefore believe the term is misleading. Because all parties agree with the term "principles," that term is used here without prejudice as to whether these are consumer rights.

DAWG participants developed eleven principles which could be supported by most parties. Each of the principles was agreed upon in general terms, but efforts to interpret them by defining terms and elaborating the details led to controversies that could not be resolved. This chapter therefore provides a simple statement of the generally accepted principle in all its vagueness, then offers additional interpretative language sponsored by one or more parties and states pros and cons that reflect the differences of opinion about the interpretive language.

Despite lack of unanimity concerning the interpretation of these principles, they were forwarded to the various DAWG technical committees and were used in developing and assessing specific proposals and options. The reader will see these principles reflected throughout the chapters of this report, particularly in the pro and con arguments following the various alternatives

The remainder of this chapter presents each of the eleven principles, plus interpretative language that has been suggested followed by pros and cons that convey the reasons why an interpretation is supported or opposed.

2.1. Right to Know

Customers must be assured of access to affordable, accurate, and multilingual informational and educational materials which enable comparison of price, quality, provider service record and terms of service offered.

2.1.1. ALTERNATIVE: Suggested Interpretation

Such materials must be readily available to all customers, at no cost for residential customers, and must be disseminated in various languages through multiple media intended to reach different customer groups. The materials must contain all basic information necessary for customers to make informed decisions about electricity suppliers, including suppliers' previous experiences

and track records in the market. The market offerings of all market participants should be included in these materials.

Alternative 2.1.1. PRO

In order for a competitive market to function, customers must have adequate information upon which to make choices. The information must be readily accessible, understandable and adaptable for comparison purposes. This Commission embraced this concept in its "Universal [Telephone] Service Report to the Legislature" (December, 1995), and has ordered a matrix format by which the information must be provided. A similar information offering is contemplated here. But, because of differences among the parties, a specific proposal for such a matrix was developed.

This concept requires no new bureaucratic structure, as the Commission's Customer Service Division and existing community-based organizations can monitor and oversee dissemination of such information.

Alternative 2.1.1 CON

1. Requiring that every customer have access to materials at no cost creates a potentially large burden on those responsible for funding informational and educational activities. Creating that burden at this time is unreasonable, without first understanding who will be burdened, and the extent of the Commission's informational and educational policy decisions. Instead, the Commission should recognize that the intent of the term affordable means that for those who cannot afford to pay for information and education, and where the Commission determines it to be necessary for all, "no cost" materials should be made available.

2. Materials developed to help customers (e.g. large industrials) make direct access decisions should be provided at affordable prices.

3. It will not be possible, nor should it be desired, to create a bureaucracy to collect, interpret, and then in a timely fashion disseminate the constantly changing set of market offerings available from market participants. The burden placed on market participants to provide information about all new offerings will be too costly; the bureaucracy that could handle such a data collection and dissemination process does not exist, and because of cost exceeding value, should not exist; and finally, the confusion created by the myriad of materials generated will be greater than the benefits for customers. Instead, consumers should be educated on how to evaluate options by themselves, or with the assistance of organizations that have been established to help those with special needs. As product offerings are presented to consumers, those educated consumers will then be able to effectively compare them with other product offerings.

2.2. Right to Choice

Customers should have choices involving real tradeoffs of quality or quantity versus cost.

2.2.1. ALTERNATIVE: Suggested Interpretation

All customers should have the ability to aggregate efficiently on a non-discriminatory basis. Customers should have choices which offer substantial savings and identifiable value.

Alternative 2.2.1. PRO

Choice must be meaningful, i.e., it should offer true differentiation and sufficient value for which making a choice is deemed desirable. For small customers, market choices will be limited unless they can exercise some market leverage, which will come only through aggregation. This is a threshold point of philosophical difference among the parties and one that requires Commission clarification. If the Commission's policies are not oriented towards promoting small customer aggregation, then it is not likely that small consumers will be active participants in the competitive market.

Moreover, vigilant supervision of the nascent market will be necessary to ensure that barriers to competition have not been intentionally or inadvertently constructed by any market players or by regulatory policy.

Alternative 2.2.1. CON

1. Electric industry restructuring will not and should not be expected to provide substantial savings and identifiable value to all customers. For some, choices will be limited, with default service provided by the UDC quite possibly the best choice available. In fact, as inter- and intra-class subsidies are attacked by retailers, those who have traditionally received the greatest subsidies may well find an increase in service costs. The Commission should therefore not saddle itself with a principle requiring all customers to receive substantial savings and identifiable value. Instead, it should make policy decisions to improve the societal economic efficiency of the electric industry overall.

2. Aggregation is unlikely to result in better prices that those from the power exchange, and therefore savings beyond those from the power exchange market should not be anticipated.

3. Requiring that all customers have access to aggregation implies that default aggregators will need to be designated in such a way as to cover the entire IOU service territories. If Alternative 2.2.1 can be satisfied by the UDC/PX playing this role, then this function is already provided for

and needs no further action. If, however, the intent of 2.2.1 is that all customers should have access to an aggregator ***other than*** the UDC/PX, this will involve substantial and probably contentious regulation and/or subsidization to require or induce private aggregators to fulfill this function. This question should be addressed as part of a general inquiry into the "default provider" function for the mature market, but need not be addressed for the opening of direct access on 1/1/98.

2.2.2. ALTERNATIVE: Suggested Interpretation

It is insufficient to provide choice simply to customers at large, because this excludes communities that are traditionally under-served. Where competitive services are not available to certain customer groups, barriers to competition that prevent access by these customers must be eliminated. This may require affirmative efforts outside of normal market forces. Monitoring mechanisms, analogous to the anti-redlining regulations currently in place for large insurance companies operating in California, should be instituted and analyzed annually for enforcement purposes. Discrimination by providers based on race, gender, ethnicity, and other unlawful categories must be discouraged through appropriate sanctions and penalties.

Alternative 2.2.2. PRO

In contrast to outright discrimination, more subtle exclusions from a full range of choices may occur for various under-served communities. An affirmative effort to ensure that a full range of choices is offered throughout California should be undertaken.

Alternative 2.2.2. CON

1. As discussed at several DAWG meetings, it is unrealistic to expect all competitive providers to offer services everywhere in the State. Providers will target the customer groups they desire to serve.

2. As with any new start-up businesses, the initial market activity could be quite limited, therefore all customers will not be reached with new options.

3. Because of the metering and data communication issues, it may be substantially more expensive to serve customers on a piecemeal basis than on a geographic area basis.

4. Affirmative efforts suggest funding of programs which may divert attention from developing the market itself.

2.2.3. ALTERNATIVE: Suggested Interpretation

The Commission should take actions that enable the market to provide choices to consumers more efficiently. For example, the Commission should seriously consider the universal metering proposals advance by some in comments on the August 30, 1996 DAWG report, since without such metering, consumers have no ability to benefit from choosing when they use energy.

Alternative 2.2.3. PRO

In a freely functioning market, whether or not there are different forms of generation services will be dictated by the needs and expectations of consumers. If consumers are willing to pay more for a fixed-term, fixed-price contract or if consumers are willing to pay less for interruptible energy, then presumably electricity service providers will be willing to offer such services. The Commission's primary consumer choice role should be to oversee the UDC's monopoly role to insure that all consumers are provided fair and reasonable access to the electricity services market.

Alternative 2.2.3. CON

1. Right to choice does not COMPEL real-time metering. As discussed in the August 30 DAWG Report, properly configured load profiling permits tradeoffs of quality and cost without requiring interval metering. Moreover, demand-side services and billing and information services can enhance value or cost-effectiveness of electric service without requiring interval metering.

2. The Commission is obligated to promote the will of the legislature. AB1890 affirms the legislature's intent to make choices and information available to the consumer; it does not solely rely upon the market to make those happen.

3. Having interval metering is not sufficient to ensure that customers receive hourly price signals. Consumers must also be purchasing energy under contracts that feature hourly-varying prices. At present, this type of pricing arrangement is only certain to exist for those customer who purchase PX energy through the UDC under the virtual direct access option. For direct access customers, it is likely that retail marketers and aggregators will base their contracts on a wide variety of pricing schedules. Because there is so much uncertainty about features of the market that will affect the very existence of hourly prices, we cannot yet know whether hourly-interval meters will be of any value to the vast majority of small customers.

2.3. Fair Dealing

All classes of customers should have access to choices and pricing options without discrimination.

2.3.1 ALTERNATIVE: Suggested Interpretation

Affordable service options must be responsive to customer needs and performance must be verifiable. Slamming, excessive rates, over-billing and other marketing abuses that exist in the telecommunications area must be prohibited and met with severe sanctions, including license revocation, penalties, full restitution to the customer, and a fund for community education. Energy providers must be made responsible for the actions of their agents or representatives. Some parties believe that rate de-averaging must be prevented; that is, that low-income customers should not be charged higher rates than other customer groups (unless higher rates are knowingly agreed to in exchange for additional services and/or value). Complete disclosure of credit terms, including compliance with the Equal Credit Opportunity Act and Fair Credit Reporting Act, must be required, and a provider of last resort or default provider should be mandated at fair and reasonable rates for all customers.

Alternative 2.3.1. PRO

1. Current California statute requires nondiscriminatory pricing for electric service. There are reasons to suspect that unscrupulous operators will attempt to abuse some customers as has been the case in telecommunication deregulation.

2. Electric service, as a necessary commodity, must be available universally and equitably. Moreover, because electricity is a prerequisite for participating in the increasingly necessary information sector, electricity must be affordable so that citizens can remain part of the nascent information network.

3. Availability of choice means that improved levels of service quality must be generally available to all customers. Those customers who wish to pay more (or less) to take advantage of service options then have that choice. This principle cannot be interpreted, as some parties do, that all service choices must be available for no additional charge. Such an interpretation is illogical.

4. This principle goes beyond simply providing basic electric service. It addresses scenarios where certain electric services, such as advanced metering, energy management systems, self-generation, and supply or demand-side management services are available for all regions, to the extent this is practicable. The objective is to avoid what has occurred in telecommunications deregulation, where entire regions or classes of customers have been denied access to digital, touch-tone and other important services.

Alternative 2.3.1. CON

1. Not all service choices need be affordable to all customers in a deregulated industry. For example, improved levels of service quality may be valued more highly by some customers than

others. Those who value it highly should be willing to pay the premiums to offset costs retailers incur to provide it. Those who value it less should make purchase decisions not by comparing their expected value to a regulated, subsidized price created especially for them, but by comparing the value they will get to the true cost of service. For them, that cost of service may not be affordable. Instead, they should choose other alternatives such as basic, regulated electric service.

2. Protecting against discrimination is sufficient to address fair-dealing issues. Creating a new regulatory framework to establish acceptable bounds for competitive market prices will hamper the creation of new products and services, and limit the success of deregulation. The Commission should not establish policies that create barriers to the introduction of new and creative ideas. Instead, policies should be implemented to monitor market activities and take strong corrective actions where retailers have acted against the Commission's express written conditions of market participation. The additional suggested language addressing discriminatory practices is therefore redundant, unnecessary, or overly burdensome for a competitive market.

3. In an unbundled environment, those who have traditionally been subsidized by others may lose their subsidies. If low-income groups, because of their energy usage characteristics, on average experience a rate increase, the Commission should not arbitrarily constrain that result without good economic justification, which has yet to be presented. The same is true if low-income customer usage patterns cause their rates to be lower on average; they should not be forced to subsidize all other customers.

2.4. Right to Redress

Regulatory oversight must continue to ensure that there is a neutral, prompt, no-cost or low-cost and effective forum for resolving customer complaints against electricity providers.

2.4.1. ALTERNATIVE: Suggested Interpretation

The forum must be no-cost, allow for instituting investigations where warranted, and provide complaint resolution and redress for all customers, including those from limited and non-English speaking communities. Regulatory powers must include enforcement, oversight and levying of penalties. Regulatory agencies must be able to suspend or revoke a provider's CPCN or license, and to impose monetary penalties to provide full restitution to consumers, as well as penalties to be paid into a fund for consumer education. Consumers must have the right to petition for enforcement actions. Pending resolution of Commission investigations against providers charged with slamming or defrauding large numbers of customers, the Commission may order the provider to post a bond sufficient to satisfy any likely judgment where the provider's place of incorporation or association is outside California or where there is evidence of fiscal instability.

Alternative 2.4.1. PRO

1. The competitive market will not develop equitably or quickly unless there is a continuing regulatory presence. Regulators must support their commitment to a robust competitive market with oversight to ensure that complaints are addressed, abuses are prevented and barriers to entry are minimized. Without enforcement power and adequate staff, effective enforcement will not be possible.

2. Rapidly escalating complaints of fraud and slamming in telecommunications following deregulation have highlighted the necessity for effective and meaningful mechanisms for prompt, no-cost consumer redress to be built in to any electric deregulation model. Both Pacific Bell and the CPUC's Safety and Enforcement report enormous increases in customer complaints, particularly with small, out-of-state newcomers to the market. Reputable companies should support consumer redress and protections that will discourage "quick buck" artists and fly-by-night scam operations from coming to California for ill-gotten profits.

3. While the CPUC appears to be the best entity to provide such consumer protections, augmented staff and resources would be necessary to provide prompt investigation and resolution for California customers. Existing statutory language provides for significant penalties (P.U. Code § 2107), but there may be the need for specific statutory language analogous to the anti-slamming language of § 2889.5 for telecommunications carriers.

Alternative 2.4.1. CON

1. Instituting a no-cost forum for redress will over-burden the system with malicious and mischievous complaints against retailers and UDCs. The Commission should want to avoid creating that environment to the detriment of fulfilling the balance of its responsibilities. Instead, a low-cost forum should be used. Customers who cannot afford the low-cost forum should be provided with redress at no cost, once they prove to an assigned Commission representative both (a) that they have a complaint which is neither mischievous nor malicious, and (b) that they are not able to afford the normal forum costs.

2. These implementation suggestions would be very costly, and would suggest a major increase in the consumer protection activities of the CPUC and/or other government agencies.

2.5. Customer Participation in Industry Oversight

Customers must be able to participate in regulatory oversight of the restructured industry, which should continue during the transition and in the mature market.

2.6. Right to Privacy

Consumers should be able to control release and use of sensitive personal information and records. Marketing should not be unduly intrusive.

2.6.1. ALTERNATIVE: Suggested Interpretation

The qualifier "sensitive" should be construed liberally as a means to ensure protection of privacy. Further, the information in question should have limited distribution to UDCs, their affiliates, and qualified energy service retailers for marketing and delivery of electricity services. It should not be resold to other businesses for competitive, marketing purposes.

Alternative 2.6.1. PRO

1. California state law places protection of personal information at a higher level than most other state or the Federal law. The emergence of competition in the telecommunications market has imposed significant privacy intrusions upon the California citizenry. Electric deregulation should guard against similar intrusions by placing release and use of personal information squarely in the hands of the customers, not the market competitors.

2. The information that the market will need to promote competition can be made available to competitors at low cost and in an aggregated form so that individual consumers cannot be revealed. Also, government can play a useful role of getting necessary information to the market so that competition can flourish while still preserving the privacy rights of Californians.

3. Customer information should be made available only to a limited set of qualified competitive parties. Perhaps businesses must be certified to be eligible to receive it. Violations of limited usage may be grounds to revoke certification.

Alternative 2.6.1. CON

1. The Commission's Decision D. 95-12-063 correctly recognizes that it will be impossible to create a truly competitive market without enabling legitimate competitors to have the same access to utility customer data bases that the utilities themselves have been enjoying. If even the most basic personal customer information is categorized as "sensitive" and subject to stringent privacy protection practices, potential competitors will be severely disadvantaged.

2. Resolution of the information access issue requires balancing the need to facilitate the competitive market and minimize transactions costs against the privacy concerns of residential and commercial customers. The subject is treated at length in Chapter 7 of the August 30 DAWG Report, to which the reader is referred.

2.6.2. ALTERNATIVE: Suggested Interpretation

The qualifier "sensitive" should be construed narrowly to cover only such personal information as is not readily available through existing information markets (albeit at some cost) and that has the potential to cause harm to customers if released to registered energy service providers .

Alternative 2.6.2. PRO

1. If we believe that competition is beneficial to consumers, then we must make it possible for well-intentioned competitors to enter the market and present their services to those consumers most likely to need their services. Over-emphasis on privacy concerns will create a barrier to entry, which may harm customers by preventing them from being informed about valuable choices more than they might be harmed by the prudent release of their energy usage data.

2. Over-emphasis on privacy works to the benefit of affiliates of incumbent utilities. Utility marketing divisions presently use their customer data bases for customer retention and market research, and their expertise and knowledge in this area cannot easily be prevented from flowing to their affiliate competitive marketers.

3. The best way to balance the information needs of the competitive market with the need to protect customer privacy is to make basic customer information easily available to registered marketers and aggregators and to establish clear, enforceable rules that penalize any inappropriate use of this information.

Alternative 2.6.2 CON

1. Attempting to balance privacy and information needs is a laudable endeavor, but must be done recognizing a few realities about customer information:

- Once released, it is very difficult to control and enforce.
- Customers will expect, and must be accorded, the right to choose whether such information will be released.
- Affiliate activities will have to be closely regulated, and probably prohibited within a UDC's service territory because of the cross-subsidization problem.

2. Initially, the Commission must err on the side of protecting customer privacy until such time as California statutes are changed by the legislature and until the market for residential energy service begins to materialize.

3. There are a number of less intrusive alternative means of distributing customer information without violating customer privacy expectations. For example, an independent, non-profit customer data clearinghouse could be used to distribute non-customer specific data on behalf of

energy providers. This could be done for lower costs than a UDC or the private market and it could avoid the complication of customer information from being transferred to the private marketer.

2.7. Quality of Service

All choices offered to customers must meet minimum safety and service criteria, and must fulfill advertised terms and conditions.

2.7.1. ALTERNATIVE: Suggested Interpretation

Service must be safe and must accord with specified service criteria. Service limiters should not be imposed upon any customers.

Alternative 2.7.1. PRO

1. Quality of service must be maintained at current levels to ensure that the expected price reductions from competition represent improved value to consumers. Also, the emergent information services upon which society increasingly relies require high quality and reliable electric service.

2. The use of service limiters or other technologies that ration service may not be imposed upon any customers as a precondition for providing service.

Alternative 2.7.1. CON

The role of service limiters should be addressed in the context of mechanisms to achieve "Universal Access," and should not be tied to quality of service.

2.7.2. ALTERNATIVE: Suggested Interpretation

Competitive supply of generation services is the first of a series of changes in which bundled electricity will be unbundled and the service components offered to customers in degrees of quality and quantity from which the customer may choose. To assure that this consumer choice paradigm operates, service providers must deliver the quality of service they promise. Holding providers to their advertised terms and conditions of service is essential to ensure that a market based on trustworthy information can flourish.

Alternative 2.7.2. PRO

1. Quality of service delivered by providers must closely match what they advertise. Regulatory agencies should ensure that marketing information is accurate. Consumers can ultimately learn how to make choices if they are provided accurate, realistic information.

2. The CPUC is uniquely qualified to assess whether electric service providers have honored their commitments. The courts do not possess adequate background in the area to make this assessment as readily as the regulatory agencies.

3. The CPUC's need to monitor market conduct compels it to play a role in determining whether market abuses are occurring. To defer to the courts is inefficient in light of the Commission's market conduct obligations.

Alternative 2.7.2. CON

Enforcement of this interpretation suggests substantial resources. Many truth in advertising problems exist in other markets, and these negative aspects of competitive markets can never be fully avoided.

2.8. Required Codes of Conduct and Oversight

All providers must meet minimum standards for certification or registration as a condition of entry.

2.8.1. ALTERNATIVE: Suggested Interpretation

As a condition of registration and continued service rights, and/or as a basis for how the Commission will handle complaints received by a provider, all providers must either accept an industry standard code of conduct or offer a comparable alternative code specifying standards upon which their customer service policies and business practices will be based. Those providers who do not adopt the standard code, or develop a comparable code and comply with a bonding requirement, will have their complaints handled more aggressively and will be subject to greater fines or penalties if they are found to be wrong.

Alternative 2.8.1. PRO

In the emerging energy services market, the expectations and responsibilities of providers and retail customers will be poorly defined absent some establishment of market rules by policy makers. Rather than establishing specific rules for all possible transaction scenarios and potential problems, the Commission should require adoption of a minimum code of conduct as a precondition for registration. Such a code can serve as a basis for service design, for customer service practices and for regulatory oversight of those practices.

AB1890 does not authorize the Commission to refuse registration if a code of conduct is not adopted. However, it does give the Commission discretion to resolve complaints and provide market oversight. This oversight power can be applied differentially based upon a company's willingness to demonstrate a commitment to quality customer service. Adoption and adherence to codes of conduct is a very tangible way of a determining a company's commitment to quality customer service.

Alternative 2.8.1. CON

An industry standard code of conduct is likely to be weak and difficult to enforce. Stronger controls over businesses are likely to be required, as can be seen from slamming practices in the telecommunications industry.

2.8.2. ALTERNATIVE: Suggested Interpretation

All market providers must meet minimum fiscal responsibility standards or provide a bond. Their top management and officers must disclose to the CPUC and keep updated at all times: (1) their legal name(s); (2) business address; (3) state where incorporated or associated, including the date of organization; (4) articles of incorporation or association; (5) the name, title and address of each officer and director; (6) name, title, and telephone number of customer contact personnel; (7) name, title, and telephone number of the regulatory contact person; (8) brief description of the nature of the business being conducted in California; and (9) disclosure of any civil or criminal actions taken against the company or any officer or director of the company for illegal acts related to the operation of the business in the past ten years in any state or federal jurisdiction.

Alternative 2.8.2. PRO

These details are necessary to pursue actions against companies and to provide an awareness on the part of companies that the CPUC is prepared to take action against the company or its officers if warranted. Moreover, some of these items are outlined in AB1890 as necessary information for registration.

Alternative 2.8.2. CON

1. These details provide a basis for taking regulatory or legal action should they become necessary, but they do not instill in the company a positive incentive to do right.

2. Industry codes of conduct can be used in conjunction with "Better Business Bureau" methods of providing information to customers about whether companies adhere to such codes of conduct, whether actions have been taken against them, and the nature of dispute resolution available.

2.9. Right to Universal Electric Service

Electricity is a universal service which government must ensure is accessible to all residential property in California.

2.9.1. ALTERNATIVE: Suggested Interpretation

Because electricity is a necessary service, electric restructuring must result in no significant cost increases for any identifiable group of customers. To the extent that savings result from the restructured market, customer classes with relatively fewer options should still realize savings comparable to the savings realized by customers with more options.

Alternative 2.9.1. PRO

As a necessary commodity, the price and availability of electricity will prove to be primary focal points for policy makers. The premise of restructuring is to bring lower prices through market-based efficiencies. However, customer classes with fewer options (which represent the majority of electricity users) will lose the market leverage that they enjoyed as monopoly-aggregated customers. Thus, a goal of restructuring must be to bring market efficiencies to those customers who are likely to be overlooked by the competitive market. Otherwise, restructuring will result simply in windfall price reductions for a select number of large electric consumers at the expense of the majority of Californians.

Alternative 2.9.1. CON

Electric restructuring may result in cost reductions to some customers, and perhaps cost increases to others. If UDCs continue to employ price averaging, those who have traditionally been subsidized by price averaging will see relative price increases as lower cost customers drop off the UDC full service system. Any instances where the CPUC unbundles delivery of a particular service will inevitably lead to variations in the prices charged to different classes of customers.

2.9.2. ALTERNATIVE: Suggested Interpretation

The right to Universal Electric Service explicitly includes a right to generation, transmission, and distribution services. The Commission should determine whether the right to distribution services includes a right to universal hourly or time-of-use metering, since such metering is required for customers to participate fully in a power market where prices fluctuate hourly.

Alternative 2.9.2. PRO

No PRO statement was provided.

Alternative 2.9.2. CON

As discussed above, the right to electric service does not mandate interval metering so long as load profiling is available and so long as demand and supply-side services and unbundled distribution services are available to small customers.

2.10. Transaction Costs

Market processes should be designed to avoid unnecessary transaction costs.

2.10.1. ALTERNATIVE: Suggested Interpretation

Regulatory policy should be focused upon lowering barriers to market entry. Essential elements of electric service should be non-proprietary, and customers with no or with only modest market choice should not be responsible for more than an equitable share of costs arising from restructuring.

Alternative 2.10.1. PRO

Transaction costs, or the avoidance of them, will prove to be a determining factor in whether competition develops for the majority of California consumers. They represent a market barrier that could undo regulatory efforts to promote competition. Where transaction costs are incurred for anything other than promoting market information, protecting customer privacy, or preserving social equity objectives, then they should be discouraged by the Commission. Discouraging proprietary systems and guarding against interclass cross-subsidies are important means of limiting unwarranted transaction costs.

Alternative 2.10.1. CON

No CON statement was provided.

2.10.2. ALTERNATIVE: Suggested Interpretation

The complexities of the restructured electricity industry will place major burdens on consumers, requiring them to obtain and assimilate general background information about new products and services and to make specific decisions. All of this contributes to transactions costs, and really cannot be avoided. What can and should be avoided is the further step of evaluating the merits of the information itself. Is it accurate? Is it complete? Regulatory policy and enforcement action

should be designed to ensure that consumers have market information that is trustworthy, so that the transactions cost burden is not expanded unnecessarily. Accuracy of information should be ensured by a standard of veracity. Marketers and other market participants that violate accuracy standards should be punished severely.

Alternative 2.10.2. PRO

1. Trust is difficult to obtain, and mistrust in one perpetrator can be readily extended to other market participants, even when unwarranted. The loss of trust will reduce market participation and reduce benefits of competitive choice.

2. Regulatory agencies should be visible in asserting that market information is trustworthy.

Alternative 2.10.2 CON

1. Developing complete and accurate information about market offerings will be difficult and must be repeated frequently. This will cause it to be expensive.

2. Innate skepticism leads many to a laissez-faire attitude, which will be hard to overcome.

2.11. Improvement over the Status Quo

The ultimate objective of electricity restructuring is to make all consumers better off. Beyond this, no agreement was reached on the general principle of improvement over the status quo.

2.11.1. ALTERNATIVE: Suggested Interpretation

Competition must support, rather than jeopardize, existing and evolving social and environmental policies and programs. Special lifeline rates and services and safeguards for low-income customers, the elderly and disabled should be preserved in a restructured environment.

Alternative 2.11.1. PRO

During this century, California has established certain social and equitable goals that it deemed as necessary components of electric restructuring. The move to a competitive electric marketplace should enable those social goals to be achieved at lower cost than under the present regulatory paradigm.

Alternative 2.11.1. CON

The Commission has assigned to the Low-Income Working Group the task of identifying the ways in which restructuring will affect low-income customers. The Commission, as a result of

that process, may determine that some of the existing social and environmental policies and programs are due for a change.

Chapter 3. Consumer Protection Needs

3.1 Introduction

This chapter discussed the practices of Utility Distribution Companies (UDCs) and other Electric Service Providers (ESPs) with regard to marketing, enrolling customers into, delivering, and discontinuing direct access service. The chapter describes some specific forms of unfair trade and marketing practices that may occur, and that should be considered when establishing education plans and enacting new regulations. Some of these unfair practices will be fraudulent and clearly illegal under existing law and regulation. In such instances, consumers have some established paths to pursue to achieve redress. In other instances, trade and marketing practices may not be illegal, but could still cause harm to unsuspecting consumers. These practices must also be addressed in consumer education and protection measures.

Because many of the anticipated unfair trade and marketing practices are already addressed by existing laws and regulations, a major concern for the Commission is to determine how best to minimize the potential for consumer harm arising from unfair trade and marketing practices that are not illegal. The Commission's primary tools to address this concern will be (1) establishing effective consumer education and awareness programs, (2) establishing an effective registration procedure to prevent unscrupulous ESPs from operating in California, and (3) creating an accessible forum in which consumers can resolve complaints. These tools are discussed in detail in Chapters 4 and 5.

Parties to this report expect that unfair practices will most frequently be perpetrated against small customers, who will be easier targets due to their relative lack of knowledge and sophistication in the area of electric service. Larger customers generally have the resources and expertise to do their own market analysis and comparison shopping, and hence will not be the attractive targets of disreputable ESPs. Therefore, the types of abuses described below should be considered primarily in connection with smaller customers and the ESPs that will be marketing services to them.

As a general principle of electric industry restructuring, the provision of UDC service will remain subject to terms and conditions specified by the Commission and incorporated in utility tariffs and service agreements. These terms and conditions will apply to all customers who receive UDC distribution service, whether they are full-service UDC customers or direct access customers of other ESPs. Thus the UDC will maintain an operational relationship with all customers to ensure continued quality of service and the integrity of the distribution network. For direct access customers, this relationship should be delineated in a distribution service agreement that covers activities and mutual obligations associated with metering, meter-reading (for distribution-system operational purposes), notification of changes in customer load, and other relevant functions. Moreover, this relationship should be maintained regardless of the

billing relationship between the UDC and the customer, i.e., regardless of whether an ESP or a third-party billing agent provides a consolidated bill to the customer.

Parties expect that a customer will be physically disconnected according to Commission-approved procedures, only for violation of its obligations to the UDC and ***not*** for violation of its contract with an ESP. Thus, the UDC should not be the disconnection agent for disputes between ESPs and their direct access customers. Rather, those ESPs should only be allowed to cease providing energy service after following Commission-specified procedures and providing adequate notice to the UDC or any alternative default provider.

Another key principle is that standards for credit, deposits, billing disputes, cessation of service, and so forth, should be the same for the UDC and for other ESPs. This is necessary to prevent redlining and other undesirable selection or rejection of customers by non-UDC providers.

3.2 Specific Areas Requiring Consumer Protection

Unfair practices, of both the illegal and legal varieties, will typically occur within three distinct phases of electric service provision: (1) marketing; (2) enrollment, or the process leading up to enrollment; and (3) the so called revenue cycle, which includes metering, billing, and collections. The following discussion suggests some but not all of the activities the Commission needs to be concerned about in each of the three phases.

The Commission should be aware that limited-English communities are of special concern with regard to unfair practices. Cultural differences combined with language limitations make these communities attractive targets for such practices, as has been well demonstrated with the practice of "slamming" in telecommunications. One advantage of a strong registration or certification program for ESPs is that certification could be suspended or revoked when there is evidence of abusive marketing practices. The mere existence of such a penalty might minimize the extent of the problem, which would be far better than having to resolve thousands of individual complaints.

3.2.1 The Marketing Phase

3.2.1.1 Illegal Practices

1. Misrepresenting Services. There are three examples of how ESPs could misrepresent their services to consumers, all of which are illegal.

2 Using another firm’s names or trademarks. ESPs could represent themselves as another, more reputable firm. If a well-known company name is used by a disreputable firm, customers may be misled into believing they are establishing service with the well-known company.

2 Using another firm's product names, descriptions, or copyrighted materials. Substandard service providers may use product names or descriptors that consumers associate with higher quality products than what is actually being provided.

2 Inaccurate or misleading information about services or terms and conditions of sale. Providers may use marketing materials that describe services or terms and conditions of sale that the service provider has no intention of providing.

2. Misrepresenting Prices. Service providers may fraudulently promote prices in marketing materials that do not accurately reflect actual prices consumers will pay.

3. Offering Inadequate Information. Service providers may fail to adequately disclose fees, charges, conditions or risks, so that the consumer does not have adequate information upon which to make an informed choice. Also, information provided may be so complex as to make it indecipherable to the average consumer. Plain-English contract requirements, standardized forms and other consumer protections partially address this problem.

4. Biased or Undisclosed Information. Information may be technically accurate but may conceal a bias in the information. For example, an ESP may indicate that an interval meter and time-of-use rates will help customers control their consumption so as to reduce their bills. If, however, it is given to a homebound senior citizen who is living in Palm Springs and unable to modify consumption, that interval meter and pricing plan may cause the monthly bills to skyrocket during the summer months.

3.2.1.2 Unfair — But Not Illegal — Practices

In a competitive electric industry, customers may be exposed to complex products and services whose price and quality differences are not easily distinguishable. Most of the practices identified here exist within every industry. However consumers in most industries have the understanding and resources available to make competent decisions and to avoid making bad choices. For the electric industry, some parties believe it will be feasible and adequate to empower consumers to make good purchase decisions. Others believe it will be necessary to establish enforceable retailer codes of conduct that cover these activities.

1. Aggressive Sales. Service providers who aggressively pursue customers may become intrusive in their sales approach. Customers who are unaware of the recourse available to them to prevent continued aggressive practices may feel intimidated into purchasing the supplier's services. An educated populace, with resources available to it to stop such sales tactics, provides the usual counterbalance .

2. High Priced Services. Some service providers will charge more than others for the same or similar services. That is a natural consequence of a free market and should not be prevented.

However if customers have no means to compare prices and other service offerings, a less-than-efficient market will evolve.

3. Unsolicited Marketing. It is reasonable to assume there will be unsolicited marketing in the restructured electric industry. In most markets this is an essential element of economic efficiency. However, phone calls, particularly at inopportune times, can be annoying or abusive to some consumers.

4. Target Marketing. Marketing to a specific group of customers who have an identified set of needs met by the service provider's products is a form of target marketing, and is practiced in every industry. As long as the target marketing practices are not discriminatory, they are legal for retailers to pursue. However some parties have expressed concerns that such targeted practices may result in inadequate consumer choice for some communities.

5. Exploitative Marketing. Marketing inappropriate services to particularly vulnerable classes of customers is a very real concern. In telecommunications, certain ethnic, low-income and senior customers have been targeted and sold over-priced long distance services. In health care and other insurance services, vulnerable seniors are frequently targeted for sales of inappropriate services by unscrupulous companies because of some seniors' relative unsophistication, their access to cash and their heightened desire for security.

3.2.1.3 Discriminatory Marketing Practices

Generation service providers should not be permitted to engage in discriminatory marketing practices. In recent years these practices have become widespread in the telecommunications industry, and they may easily arise in the competitive electric industry as well. Electric service by any ESP should be equally available to all similarly-situated potential customers. The CPUC has an interest in controlling discriminatory cherry-picking and in preventing redlining. Rules against such discrimination would not, of course, prevent customers from bearing the appropriate costs of capacity expansion for relevant customer information activities.

3.2.2 The Enrollment Phase

AB 1890 Sec. 366(d) establishes the procedures for service enrollment. Service may be initiated based on a written agreement between the ESP and the customer. Prior to the signing the agreement, the customer shall be informed in writing of: the customer's right to change back; all rates and charges for the services customer desires; material terms and conditions, and any other conditions of service; required ESP information (discussed below); and any other rates or charges that will appear on the customer's first bill. The customer and the ESP must notify the UDC in writing of a change in supplier. Potential customers who are denied service for failure to establish credit or pay deposit must be given the reason for denial promptly and in writing.

Two of the most significant types of fraudulent behavior encountered within other industries are slamming and redlining, which are discussed in the next two subsections. Following these are discussions of customer credit and deposit requirements, landlord-tenant issues and some areas not circumscribed by law that are potential problems.

3.2.2.1 Slamming

Slamming. Slamming is the unauthorized, unwanted, unsolicited switching or connection of a customer to a service provider without the knowledge or approval of the customer. Techniques used by disreputable service providers include (a) forged authorizations (by a prospective service provider), and (b) use of promotional schemes and written materials or forms that consumers sign without the knowledge that they are actually authorizing a switch. AB 1890 established regulations protecting electric customers from slamming (PU Code Section 366).

Solicitations by service providers or their agents of customer authorization for termination of service with an existing service provider and the subsequent transfer to a new service provider must include information on current rates and service terms and conditions with the new provider. Solicitations by service provider or their agents must conform with newly adopted provisions of AB1890, Sec. 366. All solicitations sent by service providers or their agents to customers must be legible and printed in a minimum point size of type of at least 10 points.

A service provider will be held liable for both the unauthorized termination of service with an existing provider and the subsequent unauthorized transfer to their own service. Service providers are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A provider who engages in such unauthorized activity shall restore the customer's service to the original provider without charge to the customer. All billings during the unauthorized service period shall be refunded to the customer. A penalty or fine of $5,000 to $20,000 payable to the Commission may apply to each violation of this Rule. As prescribed under PU Code §§ 2107-8, each day of a continuing violation shall constitute a separate and distinct offense. The service provider responsible for the unauthorized transfer will reimburse the original provider for reestablishing service at the tariff rate of the original service provider.

3.2.2.2 Redlining

Redlining is the practice of offering the same service at different prices, or offering no service at all, based solely upon illegal discriminatory criteria; for example, discriminating based on geographic location when location is not a factor affecting the cost to provide service. Existing California law embodied in the Unruh Act prohibits all business establishments from engaging in any form of arbitrary discrimination whatsoever, and the intent of the law has been liberally construed both as to types of prohibited discrimination and protected groups. Vulnerable consumers, including the poor, small residential and language and racial minorities, have been found to fall under the Unruh Act's purview.

There is concern that certain new providers to the market may choose not to offer energy services to residential and small commercial customers with load demands less than 20 kW, who are in certain geographical areas. Similar circumstances were experienced in California's insurance industry. While it is permissible to limit services to large industrial customers, for example, it is not legal to exclude certain classes of customers because of geographical areas coinciding with racial/ethnic concentrations.

ALTERNATIVE: Proposal

The Commission should require providers to submit data both at the time of their registration with the Commission, and on an annual basis, on customer applications for service and the basis for credit determination. Further, the Commission should promulgate regulations analogous to those adopted by the Insurance Commissioner and the Federal Community Reinvestment Act, which require all providers whose business revenue in California exceeds a given amount to file information by zip code, including:

- the number, percentage, race or national origin, and size of customers (residential, small business or industrial) served in various communities accompanied by a map showing those customer concentrations and the rates being offered to each;
- the number and percentage of direct mail and telephone solicitations for new business in various communities, including zip code and racial/national origin identification of the customer; and
- the number and percentage of applications, with zip code and race or national identification, for which the energy provider declined to provide direct access service.

Alternative 3.2.2.2 PRO

These data would enable the Commission to ensure that all customers benefit from deregulation through access to choices about their electricity provider and/or aggregator. Additionally, it will ensure that certain geographical locations are not charged higher rates than others for like services. Finally, it will minimize the likelihood that certain groups of customers, such as the poor or racial minorities, will by necessity be captive customers of the local utility by virtue of not having access to similar choices offered to other like customer groups. Requiring providers upon initial licensing to specify what types of customers they intend to serve will assist the Commission in monitoring that unlawful redlining does not occur. Additionally, retail energy suppliers must maintain with the Commission written policies on applications for service and the basis for its determination of credit. The policy must describe the criteria for becoming a customer of the supplier, and the criteria must be filed upon application for license/registration and kept updated at all times.

A retail energy supplier, including aggregators and meter suppliers, may hold themselves out as serving customers with a particular set of end-uses or load curves, or who meet other criteria related to the generation source and pricing policy of the supplier, so long as such criteria do not

have the effect or intent of discriminating among customers on grounds prohibited by the Unruh Act or Equal Credit Opportunity Act.

Alternative 3.2.2.2 CON

The reporting requirements proposed in this section are unrealistic and counterproductive to those constituencies they are designed to protect. While well meaning, some fundamental realities are ignored. It is therefore recommended that the Commission ***not*** adopt the proposed reporting requirements.

The burden of these proposed requirements are quite onerous. Information must be gathered on a variety of consumer characteristics that may not even be of interest to the retailing firm, and the information must be plotted on a map showing concentrations of customers. The burden this creates on a retail business may inhibit any activity in the residential market due.

A fundamental problem with the proposal is that the comparison of requirements is to insurance companies, which have cost-of-service based ratemaking under regulation by the state, and to the Community Reinvestment Bank where applicants ask for government money. The competitive retail business is not a cost-of-service business and is not subsidized by the government. These are competitive businesses and, in the case of residential customers, ones that will likely have to compete for extremely small margins. Erosion of those small margins to obtain comprehensive census-tract data is overkill.

The proponents would require that every customer denied service be listed by zip code and ethnicity, regardless of reason denied. Of course, a firm that was not interested in ethnicity and did not consider that in its decision-making would be violating these requirements. The proponents also want retailers to determine the ethnicity of customers in areas targeted for marketing, even if the ethnicity is not known before marketing. For example, if a marketer wanted to approach every consumer in San Francisco by mail, the firm would be required to obtain ethnicity data to comply with these requirements. One implication of these requirements is that ethnicity ***must*** be a factor in any marketing and business decision.

The proponents would require that all prices be disclosed to the Commission. But prices will vary across customers based on service quality, cost of providing service, success at major penetration of local and neighborhood markets, and a host of other reasons. Further, the PX price will be available daily for anyone to see. The proponents need to make a stronger case for the value of this data being compiled and sent to the Commission before the Commission should consider ordering another compliance filing.

The proponents assert that this information will ensure certain desirable outcomes, but there is no explanation of how this would work. Is this to be a Commission staff enforcement function? Or is the information to be made public? If the information is made public, how are the business plans of competitive retailers to be protected?

There is also silence on the venue for alleged violations. The activities that are targeted are illegal already. Such acts are not generally not prosecuted before the CPUC. The proponents need to explicitly state what role the CPUC is to play in this process.

Here the Commission faces a difficult choice. Having committed California to a competitive future, the Commission has also opened up opportunities and risks for consumers and retailers. The decision the Commission must now confront is whether it is desirable and feasible for the Commission and its limited resources to substantially insert itself in these competitive markets, or to follow through on the promise of competition and allow the market to function to the extent possible. This latter approach is probably acceptable given the three major differences between the Commission's experience with telecommunications deregulation and electric deregulation.

The first is the AB 1890 requirement that changes in electric service require written validation from the consumer, which protects against the slamming issues which have caused most of the consumer complaints in the telecommunications arena. The second is a Commission directed, comprehensive education program in advance of the electric deregulation, an approach that allows consumers to protect themselves. The third is the creation of a visible electric service price for consumers through the PX and published UDC tariffs. This allows all consumers to compare their prices with the market price. There is no required reporting of information to a central government bureaucracy to protect informed consumers.

The proper role for the Commission is to register retailers, and to expeditiously impose appropriate sanctions when illegal or unethical behavior is detected. The Commission's role cannot be to assume that every retailer is evil and impose draconian sanctions in advance.

3.2.2.3 Non-Discriminatory Credit and Deposit Rules

Discrimination in the granting of credit based on race, sex, marital status, religion, national origin, age, handicap, familial status, or public assistance status must be illegal. Discrimination in the terms of granting credit, such as different deposits, payment terms, meter requirements, credit limits, amount of deposits, etc., must also be prohibited (see Equal Credit Opportunity Act (ECOA) 15 U.S.C. section 1601 et seq). The Fair Credit Reporting Act mandates, as set forth in 15 U.S.C. sections 1681 et seq, do not resolve the problem of a past, unrelated credit problem, such as failure to pay a store bill, precluding an electricity customer from receiving service or subjecting him/her to onerous terms to secure it, such as prepayment or adverse terms.

Direct access and retail restructuring in general will create confusion about appropriate credit and deposit rules. The unusual feature of electric and natural gas service — the required payment for consumption is determined after the fact of consumption — suggests, properly, that deposits have been a reasonable practice. This is likely to be the case in the restructured industry as well. Deposit practices should not, however, be a means of discriminating against communities. Personal credit histories may be a legitimate consideration, but cultural or language affiliation are

not. Two alternative views of appropriate mechanisms to govern terms and conditions are shown below to illustrate the disparity of views.

[1] CPUC Supervision of ESP Offerings. All ESPs should be required to offer publicly-supervised, non-discriminatory terms and conditions of service. For UDCs, which are subject to high standards already for regulated monopoly activities, such Terms and conditions would be subject to significantly less regulation than regulated monopoly services since they are voluntary contractual agreements.

[2] Reliance on the Marketplace. Except in the areas of public safety, terms and conditions of service between an ESP and customers need not and, for competitiveness reasons should not be publicly-supervised. In an open market, there is no need to regulate what services are packaged with the electricity commodity sale or the terms and conditions surrounding that sale. Regulation will only stifle the emergence of creative customer solutions and diminish the competitiveness of those with new ideas.

ALTERNATIVE: Proposal

Following is one proposal for credit and deposit rules. They assume that the same credit and deposit requirements shall apply to Energy Services Providers and UDCs alike.

Credit Requirements

Each applicant for service shall provide credit information satisfactory to the service provider or pay a deposit. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, name of employer, employer's address, customer's driver's license number or other acceptable personal identification, billing name, and locations of current and previous service. Credit cannot be denied for failure to provide social security number.

A cosigner or guarantor may be used provided the cosigner or guarantor has acceptable credit history with the service provider.

The UDC has the ability to use a customer's back payment record with an ESP against the customer upon return to bundled service.

Deposit Requirements

Deposits shall not be required if the applicant provides credit history acceptable to the service provider. In the event the customer fails to establish a satisfactory credit history, deposits are a form of security that shall be required from customers to ensure payment of bills.

Each energy service provider can require a deposit. Deposits are not transferable when changing from ESP to UDC service or from a UDC to ESP service.

Return of Deposits

1. The UDC will refund the supply portion of a customer's deposit upon customer change from UDC to ESP as a provider of supply subject to conditions in Rule X. The UDC may refund a customer's deposit by draft or by applying the deposit to the customer's account; the customer will be so advised. If the customer establishes service at a new location, the UDC may retain the deposit for such new account, subject to the conditions following.

2. Upon discontinuance of service, the UDC will refund the customer's deposit or the balance thereof which is in excess of unpaid bills for service furnished by the UDC.

3. Once the customer's credit is established in accordance with the rules for Establishment and Re-establishment of Credit, the UDC will refund the deposit either upon the customer's request for return of the deposit or upon review by the UDC.

3.2.2.4 Landlord-Tenant Issues

Electric Service is regarded by law as an absolute necessity for all residences. Real property owners are legally required to have electric service installed at their property before it may be occupied, whether by the owner or by any other person (Civil Code Sec. 1951.5). However in a restructured industry, there are legitimate questions as to who would own the electric meter or be responsible for the meter in a rental arrangement.

Currently, electric service is often provided to the property owner, not the property tenant. Tenants, of course, enjoy certain rights in billing if they, in fact, are specifically charged for electric service used. But owners exercise reasonable control over the nature of that electric service, including the decision whether they or their tenants are to be the customer of record. In many cases, property rights in a premises tend to determine control over goods and services appurtenant to the premises, regardless of whether those appurtenant facilities are owned or not.

With the deregulation of telephone maintenance, customers were put in a position to choose whether to own the phone and type of phone service. The landlord is responsible only for the inside wiring, but nothing else. Similarly, choice of electric service brings with it the opportunity for the customer to choose the type of electric service and the meter to be used. In master-metered arrangements, clearly this choice will be limited. In individually metered arrangements, however, it would seem that each customer should have the choice of meter and the responsibility for maintenance of that meter. The landlord should not be able to impede this choice. For example, with communal ownership properties such as condominium complexes,

individual owners or tenants of units should be able to select a different ESP than the one chosen by the majority ownership for the communal property. Although the majority will have control over communal areas, individuals must maintain control over the property only they use.

This issue is a compelling one due to the possibly illegal tie-in arrangements that have developed in the provision of Cable TV and other telecommunications services. Telecommunications providers have entered into arrangements where they install wiring and infrastructure for a residential or small business complex in such a way as to preclude other providers from offering service to those residents. In fact, many providers have entered into written contracts expressly excluding other providers from serving the complex and requiring property managers to enforce this provision. Such arrangements are probably illegal and should not be tolerated in the nascent electric industry.

3.2.2.5 Legal Enrollment Practices That Could Be Harmful

High Cost Exit Terms. Some service providers may offer contracts that require lump sum payments upon either the consumer's or retailer's termination. Although some may consider these contracts to be unreasonable, they may provide the greatest value to others. When comparing these types of contracts with others, consumers must have the knowledge and resources needed to make rational decisions.

Long Term Contracts. Length of contracts is a consideration consumers have to make when acquiring many products. Unsuspecting consumers may be harmed if a contract term is longer than ultimately desired, and an advance payment attached to it makes it costly to cancel. For example, lifetime contracts in the health club industry were banned by law in the 1970s because of high up-front costs paid by consumers to acquire lifetime membership, which were lost when a substantial number of firms discontinued business. However, lifetime memberships still exist in many other industries such as for airline club room use.

Unexpected Price Volatility. Service providers may provide energy services at prices which appeared to be stable when the contract between customer and supplier was signed, but because of changes in the environment become volatile. These services are analogous to variable rate mortgages sold to homeowners in a time of stable interest rates. Those homeowners may find their mortgage payments changing significantly if there is a significant rise or fall in the index rate. Energy service contracts tied to historically stable energy price indexes may experience similar volatility. Consumers should have access to information allowing them to make informed decisions when choosing between variable and fixed energy service contracts.

3.2.3 Metering, Billing, and Revenue Collection

3.2.3.1 Metering Problems

Tampered Meters. Service providers may sell or use tampered meters which report higher or lower than actual energy consumption.

Defective or Non-Performing Meters. Service providers may knowingly use defective or non-performing meters with the intent of defrauding customers.

Chronic bad meter readings or billing inaccuracies cause consumers to incur higher monitoring and correction costs. Using improperly trained personnel, or inadequate procedures are examples of many possible causes.

Energy Theft. Energy theft can include intentional diversion of electric current to an alternate meter with the intent of billing customers for higher than actual usage.

Service Limiters. In countries where energy services have been deregulated, some energy service providers have moved to service limiting meters as a means of reducing delinquencies and collection costs. These meters come in different variations and have varying cut-off mechanisms, but all have one common characteristic: they facilitate pre-payment for electric service.

If these kinds of meters were required for certain customer groups, a significant change in the quality of service currently enjoyed by Californians would result. Currently, all electric customers are entitled to render payment after having received service. Where a customer's credit is at issue, several months deposit may be required. However, because energy demands are difficult to predict, prepayment for electric service has traditionally not been required because of the risks that anticipated demand may be wrong, leaving customers without service when their usage exceeds the prediction. For that reason, all parties to these workshops agree that California should avoid ***requiring*** any customer to use service limiting meters.

As an option controlled by the customer, however, service limiting meters should be allowed. Customers who have proven to be credit risks are today required to pay a deposit equal to two months expected bills. That money is held by the utility for up to one year without interest. Some customers may prefer to contract with an ESP that installs service limiting or pay-as-you-go meters, thereby avoiding that deposit.

Other customers may be interested in these meters as well, for they may eliminate the need to perform meter reading, data processing, billing, payment processing, and collection activities. These savings, when passed to the consumer, create an incentive for both good and bad credit customers to make the switch.

In the event that providers wish to deploy such meters, the Commission should hold a rulemaking to establish the conditions for their use, the protections for customers choosing these meters, and installation, operations and maintenance practices

3.2.3.2 Billing Issues

Undelivered Services. Service providers may intentionally bill for energy services they did not deliver and perhaps did not ever expect to deliver.

Unpaid Previous Balances. Alternatively, a customer could be billed by a newly-selected service provider for an unpaid balance due a previous service provider. This could be accomplished without the knowledge or consent of the customer, or without an opportunity to settle the unpaid balance with the previous service provider.

Perhaps an explanation is required for this scenario. Assume a customer does not pay an account in full with a current service provider. Assume further that the customer deselects this provider and selects a new one. It is conceivable in today's technological environment that when the customer selects a new service provider the unpaid balance may follow the customer to the new service provider's account. This new provider may seek to collect this unpaid balance for its own enjoyment by misrepresenting to the customer that (1) it is a legal obligation owed to it, or (2) it is acting as a collection agent for the previous service provider.

If past unpaid balances are billed by new service providers, then that provider must clearly indicate to the customer that the balance is from a previous service provider and that the new provider is acting as an agent. Further, the customer should be given the choice of whether or not to pay the outstanding bill directly to the new provider or to settle the matter separately with the previous service provider using available administrative and legal means.

Required Information on Bills. The billing agent shall identify the UDC and the ESP, if applicable, on each bill. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write. If the service provider uses a billing agent, the provider must also include the name of the billing agent it uses. Each bill for energy service will contain notations concerning the following areas:

1. When to pay your bill;
2. Billing detail including the period of service covered by the bill;
3. Late payment charge and when applied;
4. How to pay your bill;
5. How to ask questions about your bill;
6. Termination of service;
7. Breakdown of charges, if other services are billed;
8. Breakdown or unbundling of energy components included in the bill, to allow comparisons with other suppliers;
9. Explanation of how to read and understand the bill;
10. Dispute resolution procedure.

Disputed Bills. If the correctness of a bill is questioned or disputed by a customer, an explanation should be promptly requested from the billing agent. If the bill is determined to be incorrect, the billing agent will issue a corrected bill.

A customer who has initiated a complaint or requested an investigation shall be given an opportunity for review of his/her complaint. If a residential customer and the UDC or ESP agree on the amount of the bill, the UDC or ESP will determine and advise the customer of the date the unpaid balance of the account must be paid. If an amortization period is warranted and agreed to by the customer and the billing agent, service will not be discontinued for nonpayment, provided the customer continues to meet the obligations of that agreement and keeps current their account for utility service as charges accrue in each subsequent billing period. If the customer fails to comply with this arrangement, service shall be subject to discontinuance for nonpayment of bills as provided in the section on Discontinuance of Service.

If a customer and the service provider or UDC fail to agree on the amount of the bill after the review, and the service provider or UDC has determined to its satisfaction that the bill is correct, the service provider or UDC will explain to the customer that:

1. The service provider or UDC has completed its investigation and review.

2. In lieu of paying the disputed bill, the customer may deposit with the California Public Utilities Commission at its office in the State Building, San Francisco, CA 94102, the amount claimed by the UDC or service provider to be due. A check or other form of remittance for such deposit should be made payable to the California Public Utilities Commission. A residential customer who is unable to pay the full amount in dispute will not be required to deposit the full amount in dispute for a bill covering a period in excess of 90 days but shall deposit an amount equal to 90 days at the average disputed charge per day of the disputed bill.

3. The customer shall submit the disputed bill and a statement setting forth the basis for the dispute of the amount billed.

4. Upon receipt of the deposit, the Commission will notify the UDC or service provider, review the basis of the billed amount, and advise both parties of its findings and disburse any deposit in accordance therewith.

5. Service will not be discontinued for nonpayment of the disputed bill when deposit has been made with the Commission pending the outcome of the Commission's review.

6. Failure of the customer to submit a dispute to the Commission in accordance with 1) and 2) above will warrant discontinuance of customer's service in accordance with the Section concerning Discontinuance of Service.

7. If, before completion of the commission's review, additional bills become due which the customer also wishes to dispute, the customer should follow the procedures set forth in 2) and 3) above with regard to the additional amounts claimed by the service provider or UDC to be due. Failure to follow the procedures in 2) and 3) above may warrant discontinuance of customer's service in accordance with the Section concerning Discontinuance of Service.

8. Subsequent bills, not in dispute, rendered prior to the settlement of the disputed bill, will be due and payable in accordance with the Sections concerning Rendering and Payment of Bills and Discontinuance of Service.

An Alternative: Private Dispute Resolution . While the Commission is obligated by law to provide dispute resolution services, it can encourage the industry to create its own, sustainable complaint resolution process, thus reducing regulatory costs and interference. The following proposal should be considered as a model that may be imposed upon the three investor-owned utilities but voluntary for all other providers during the transition period, after which it should be totally voluntary.

The model is patterned after a public-private model used in Australia to deal with insurance disputes. The Australian insurance industry established an "Insurance Enquiries & Complaints Corporation" which addresses complaints or claims by insurance customers who feel they have been not been dealt with fairly by their insurer. Over 100 individual insurers participate in the plan.

This office is industry funded and managed, but it is overseen by non-industry governing board which sets budgets and overarching policy. The non-industry governing board of seven individuals is comprised of three non-industry persons selected by industry and four non-industry persons selected by government. They are charged with protecting the public interest.

The office has a two-step process in resolving complaints. Any customer who calls must have made an overture to the company against which the complaint exists. The calls are received by intervention officers who develop a record of the complaint and attempt to resolve it informally. For each complaint that is resolved in favor of the customer, the company is charged a fee of $600. For each complaint resolved in favor of the company, the charge is a modest $200 administrative fee. Where is there is clearly no basis for a complaint, the intervention officer does not open a file.

If there is no informal resolution, then the complaint goes before a special arbiter who works for the entity and is answerable to the governing board. These arbiters are independent judges who are assigned the task of resolving a complaint, first through mediation and, failing that, arbitrating a decision. The arbiter's decision is binding upon industry but is not binding upon a complainant. Moreover, a complainant is not obligated to use this mechanism, thus ensuring that it does not

become a captive of the industry. Consumers would use the mechanism only if it is more responsive, easier and quicker than courts or regulatory enforcement agencies.

The model is appealing because it is self-sustainable, independent, sufficiently expert to resolve complicated disputes, and readily adaptable to electric or telecommunications dispute resolution. If the model works for industry and consumers alike, then it is sustainable. If it swings towards one interest more than another then industry participants may withdraw their participation or consumers may opt not to use it. Most importantly, it is accessible and imposes no monetary cost upon the complaining consumer.

3.2.3.3 Collection Practices

Illegal collection activities include those steps taken by service providers that are prohibited under the laws and regulations governing service disconnection to collect unpaid bills. For example, it is not legal to force collection of an unpaid bill by discontinuing service without first adhering to legal notification and timing requirements.

3.2.3.4 Discontinuing Service

Notice Requirements. Notices to discontinue service for nonpayment of bills shall be provided in writing by first class mail to the customer and to the UDC, not less than 10 calendar days prior to termination. Each notice of discontinuance of service for nonpayment of bills shall include all of the following information:

1. The name and address of the customer whose account is delinquent.
2. The amount that is delinquent.
3. The date by which payment or arrangements for payment are required in order to avoid termination.
4. The procedure the customer may use to initiate a complaint or to request an investigation concerning service or charges.
5. The procedures the customer may use to request amortization of the unpaid charges.
6. The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.
7. The telephone number of a representative of the UDC or service provider, who can provide additional information or institute arrangements for payment.
8. The telephone number of the commission where the customer may direct inquiries.

UDC Required Procedures. UDCs will follow approved discontinuance of service procedures. The UDC will not terminate service for service provided by a third party. The UDC has the right to discontinue service without any liability to energy services provider.

There are conditions when the UDC may deny or terminate service to the customer immediately and without notice. However, such termination may be exercised only with express permission by appropriate regulatory or local police authorities, and then only for specific reasons including:

a. The UDC determines that the premise wiring, or other electrical equipment, or the use of either, is unsafe, or endangers the UDC's service facilities.

b. The customer threatens to create a hazardous condition.

c. Any governmental agency, authorized to enforce laws, ordinances or regulations involving electric facilities and/or the use of electricity, notifies the UDC in writing that the customer's facilities and/or use of electricity is unsafe or not in compliance with applicable laws, ordinances, or regulations.

d. When relocation or replacement of electric service by the UDC is necessary, the service, including the metering facilities, will be installed in locations mutually acceptable to the UDC and the customer and which conform to current applicable codes, regulations and standards. If no such mutually acceptable location can be agreed upon, the UDC shall discontinue service until the customer and the UDC reach agreement.

e. The UDC will not supply service to a customer operating equipment which is considered by the UDC to be detrimental to either the service of other UDC customers or to the UDC. The UDC will terminate service and refuse to restore service to any customer who continues to operate such equipment after receiving notification from the UDC to cease.

f. The rights of the UDC and the consequences in cases where fraudulent information is given to the UDC by the customer shall remain as they are presently.

ESP Required Procedures. ESPs will follow Commission approved procedures for discontinuance of service due to non-payment of energy services bill by the due date shown on the bill and after all notice requirements and periods of response have been met.

The ESP shall have the right to terminate supply arrangement, discontinue service, or refuse to provide service to applicant or customer, with 7 days advance notice if the acts of the customer or conditions upon the premises are such as to indicate that false, incomplete, or inaccurate information was provided to the ESP or if the acts indicate intention to defraud the service provider. This includes fraudulently providing and receiving energy and energy services and/or providing false credit information.

Energy services providers must provide at least 30 days notice to UDC of intent to cease, discontinue or terminate supply or service arrangement whether due to non-payment or customer request.

Customer Responsibilities. Customer is responsible for notification to UDC, proper agreements, etc. for customer default service if UDC provides energy due to discontinuance of service by energy service provider.

Chapter 4.
Consumer Protection Institutions and Mechanisms

4.1 Methods of Governance

4.1.1 Public Oversight

While Direct Access makes electric service competitive and, therefore, an appropriate subject for market-determined rates, electric service continues to be an essential service and "affected with a public interest." Parties do not agree, however, on the extent to which private, competitive firms should be subject to industry-specific rules governing competitive behavior and contracts with customers. Some parties argue for a more laissez-faire approach, while others argue that market rules to ensure fair competition should be broadly applied, even to include energy efficiency providers because efficiency competes in the generation market. Consumer protection rules, some parties assert, should apply to all firms that deal directly with retail consumers. Some parties have also indicated a need for rules to govern relations between competitive firms and regulated monopolies, to ensure a fair competitive playing field with no special advantages for monopoly affiliates.

Appendix D of the August 30 DAWG Report provides some relevant portions of existing California statutes. This material is presented for information purposes only. No analysis has been performed to decide whether these provisions may be considered adequate to govern business practices in the electric services marketplace. Specific areas covered in these statutes include: prohibition of trusts and other forms of anti-competitive behavior; distinction between acceptable cost-based pricing and unfair discriminatory pricing; misleading advertising claims; equal treatment of customers with regard to credit and deposit policies; disclosure of credit terms; confidentiality of customer credit information; disclosure by businesses of their own financial status; fraud allegations against the customer; complaint resolution; and, consumer participation in rulemaking proceedings.

4.1.2 CPUC Authority Under AB 1890

Does the CPUC have jurisdiction, under existing California law, over all competitive providers of retail electric service, and if so, in what forms and to what degree? The following discussion begins to address these questions by reference to CPUC authority as expressed in the California Public Utilities Code and the provisions of AB 1890, enacted September 1996.

4.1.2.1 Entities Subject to CPUC Regulation

The CPUC has jurisdiction over "electrical corporations" as defined by California Public Utilities Code § 218: "'Electrical corporation' includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state . . ." (For the purposes of this discussion, the current statutory exemptions are ignored.) "Electric plant" is defined to include "all real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, ..." Cal. Pub. Util. Code § 217. "Electrical corporations" are defined to be "public utilities." Cal. Pub. Util. Code § 216.

Section 6.2.1 of the August 30 DAWG Report, which was written prior to the enactment of AB 1890, noted a few fundamental issues that needed to be decided to determine the extent of CPUC jurisdiction over competitive electric service retailers. These issues concerned the applicability of the terms "electrical corporation" and "electric plant" as defined in PU Code §§ 217-218. To be specific, the terms "electrical corporation" and "electric plant" are defined broadly enough in the Code to suggest that competitive retailers could be included in these definitions. At the same time, Section 216 of the Code says that all "electrical corporations" are "public utilities," which suggests that the definitions should not apply to non-utility entities, and therefore competitive retailers should not be subject to CPUC regulation.

In Decision D. 95-07-054 regarding regulation of local exchange telecommunications services, the CPUC extended its authority to cover competitive providers by defining its authority in terms of the services being provided, regardless of the type of entity providing the services or the type of physical assets (wire or wireless) used in providing the services. The DAWG parties speculated in the August 30 Report that an analogous argument for the electric industry could establish CPUC authority over competitive electric service providers. With the enactment of AB 1890, however, this option appears less likely, although the uncertainties are not yet fully resolved.

Section 9.5 of AB 1890 amends § 216 of the Public Utilities Code by adding subsections (g), (h) and (i). These subsections exempt certain entities from being considered "public utilities."

Subsection (g) provides:

> Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 . . . does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

Subsection (h) provides:

> Generation assets owned by any public utility prior to January 1, 1997, and subject to rate regulation by the commission, shall continue to be subject to

> regulation by the commission until those assets have undergone market valuation in accordance with the procedures established by the commission.

The above is consistent with § 377 of AB 1890, which states that "non-nuclear generation assets owned by any public utility prior to January 1, 1997, . . . [shall] be subject to commission regulation until those assets have been subject to market valuation . . . ."

Subsection (i) provides:

> The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, . . . , sales in the Power Exchange . . . , or the use or sale as [otherwise] permitted, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

As noted above, the term "electric plant" is broadly defined under existing law to include "all real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, material, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power."

No matter how broadly the terms "electrical corporation" and "electric plant" are interpreted, these new provisions make it clear that electric service retailers will not be public utilities. The provisions leave open, however, the possibility of following the lead of D. 95-07-054 and defining new retailers as "non-public-utility electrical corporations," over which the CPUC would have jurisdiction. Elsewhere in AB 1890, however, the term "electrical corporations" is used in a way that suggests that only the existing IOUs are electrical corporations. Thus AB 1890 appears to give the CPUC only very limited jurisdiction over "entiti[es] offering electrical service" and to stipulate that these entities are not "electrical corporations" as defined in PU Code Section 218. Under AB 1890, the CPUC will have jurisdiction with respect to registration and the information disclosure practices of entities offering electrical services, and will "accept, compile and help resolve" customer complaints regarding these entities. Each of these is discussed briefly below.

4.1.2.2 Registration

Section 394(a) provides that

> Except for an electrical corporation as defined in Section 218, each entity offering electrical service to residential and small commercial customers within the service territory of an electrical corporation shall register with the commission. The registration shall include the following seller information:
>
> (1) Legal name.

(2) Current telephone number.
(3) Current address.
(4) Agent for service of process.

Note that this language does not explicitly grant or deny the CPUC the authority to add to the list of registration requirements or to sanction a registered provider by suspending its registration. This is one question that is of great interest to the many DAWG Parties who have argued for stronger registration and enforcement provisions than those contained in AB 1890.

4.1.2.3 Information Disclosure

Section 394(b) provides:

> Except for an electrical corporation as defined in Section 218, each entity offering electrical service to residential and small commercial customers with[sic] the service territory of an electrical corporation shall, at the time of the offering, provide the potential customer with a written notice describing the price, terms, and conditions of the service, ...

The notice must also provide the amount and applicability of the CTC and notice of the customer's right to rescind the contract. Section 394(b) also provides that

> The commission shall assist these entities in developing the notice. The commission may suggest inclusion of additional information that would be useful to the customer.

The CPUC's authority with respect to the information disclosure practices of entities offering electrical services who are not electrical corporations stands in stark contrast with the CPUC's authority with respect to the information disclosure practices of electrical corporations.

Section 393(c) applies to "electrical corporations." Electrical corporations must: (1) identify the five unbundled charges on their bills; (2) and provide conspicuous notice that if customer purchases electricity from another provider that customer will continue to be liable for payment of the CTC. Moreover, 393(c) explicitly allows the CPUC to require electrical corporations to include additional information.

In addition, before implementation of the CTC:

> electric corporations, in conjunction with the commission, shall devise and implement a customer education program informing customers of the changes to the electric industry. The program shall provide customers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to approval by the commission.

4.1.2.4 Customer Complaints

Section 394(c) provides that the "commission shall accept, compile and help resolve consumer complaints regarding entities offering electrical service that are required to be registered pursuant to this section." AB 1890 does not, however, charge the CPUC with any authority or responsibility to fully resolve such complaints.

4.1.3 CPUC Regulation of Local Telephone Competition

CPUC Decision D. 95-07-054 (as revised by D. 95-12-056) establishes rules to govern local competition in telecommunications service. The decision authorizes prospective *competitive local carriers* (CLCs, which need not operate any telephone wires or other facilities required for providing telephone service) to request certificates of public convenience and necessity (CPCNs) to provide local exchange service under a set of specified rules. There are at least three elements of this decision that suggest analogies for the electric services industry: 1, the way the scope of CPUC authority over CLCs was determined; 2, use of the CPCN as the registration mechanism; and 3, the content of the market rules.

4.1.3.1 Determining the Scope of CPUC Jurisdiction

In D. 95-07-054 the CPUC defines the scope of its rules to cover all providers of a specific type of service. "These interim rules apply to the provision of local exchange telecommunications services by CLCs, and where applicable, LECs [the local exchange carriers Pacific Bell and GTE California, the existing monopolies]" [D. 95-07-054, Appendix A, p. 2]

In a discussion of the "Applicability of the CPUC Rules to Wireless Services" the CPUC makes clear that "the key distinction [in deciding whether a carrier shall be subject to CPUC rules] is what service is being offered by the carrier in question. ... We do not intend to restrict the type of technology a carrier may employ to offer local service. ... The adopted rules shall apply to any CLC irrespective of whether it uses wireline, wireless, or both to provide a service that is equivalent to the current wireline basic telephone service." [D. 95-07-054, pp. 23-24]

In making the above assertion the CPUC interprets quite broadly the definition of "telephone corporation" as stated in Public Utilities Code § 234: "'Telephone corporation' includes every corporation or person owning, controlling, operating or managing any telephone line for compensation within this state." The reader should note that this definition is much narrower than the definition of "electrical corporation" in Public Utilities Code § 218, since the former seems to hinge upon a specific type of asset, the telephone line, whereas the latter encompasses "all real estate, fixtures and personal property" (see Section 6.2.1).

Thus, direct investment in telecommunications infrastructure is not a prerequisite for a telephone company to be classified as a CLC. Indeed, the rules distinguish two types of CLCs:

"Facilities-based CLCs are those which directly own, control, operate, or manage conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network.

"Non-facilities-based CLCs [also called 'resale CLCs'] are those which do not directly own, control, operate, or manage conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network." [D. 95-07-054, Appendix A, p. 3]

4.1.3.2. The Certificate of Public Convenience and Necessity (CPCN)

The CPCN is traditionally a permit that a regulated utility must obtain from the CPUC prior to undertaking a major infrastructure project [see Public Utilities Code § 1001]. The process for obtaining a CPCN requires showing that the project is in the public interest, that it will comply with all applicable regulations, and that it will not interfere with the operation of any nearby or competing utility. Because of this essential association with construction of physical facilities, the CPCN as a certification vehicle for CLCs is a departure from its traditional use, especially when applied to non-facilities-based or resale CLCs.

To obtain a CPCN, a prospective CLC must demonstrate "the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications service." [D. 95-07-054, Appendix A, p. 4] The decision then goes on to specify financial and other standards, including cash-on-hand requirements, and states that "All information furnished to the Commission for purposes of compliance with this requirement will be available for public inspection or made public, except in cases where a showing is made of a compelling need to protect it as private or proprietary information."

4.1.3.3 The Rules for CLCs

The rules specified in D. 95-07-054 (Appendices A and B)and D. 95-12-056 (Appendix C) can be divided into two main categories: rules governing pricing and business practices, and rules governing consumer protection. Appendix D Section D.2 of this report contains some excerpts from the CLC rules which suggest analogies for the electric industry.

In the area of pricing and business practices, there are rules applying to: prior customer notification of rate increases; nondiscriminatory service; limited obligation to serve; required Emergency 911 service; special services for deaf and otherwise disabled persons; prompt repair response; information disclosure to the Commission; review of Commission-mandated bill inserts; handling of customer deposits; and redlining.

In the area of consumer protection, there are rules applying to: formal and informal complaints; required disclosure of company information to customers; the process for entering contracts and initiating service; information required on customer bills; establishing credit; handling of customer deposits; notifications on rates; handling of bill disputes; discontinuation of service; change of service provider; slamming; and privacy of customer information.

4.1.4 Alternative Agencies Responsible for Consumer Protection

At this stage of DAWG's investigation, there has been no systematic investigation of the alternative agencies that might be charged with supervising the restructured industry. It is possible that several agencies might split various responsibilities. The following brief discussion is intended to provide a sense of the alternatives that have been identified.

[1] Expanded Authority of the CPUC. Clearly, the CPUC is a leading contender for expanded authority to regulate new entities within the industry. The CPUC has traditionally provided a consumer complaint function, and it is planning to devote greater portions of its resources to these efforts as a result of restructuring.

[2] State Government Agencies. One or more state government agencies with similar consumer protection authority could take on additional duties. The Department of Consumer Affairs is one appropriate agency. The Bureau of Weights and Measures might be appropriate supervisor of metering standards. The Department of Justice might be an appropriate entity for some activities. One advantage of non-CPUC agencies is that they would be received more favorably by municipal utilities who will have need of comparable consumer protection activities as they undergo their own version of restructuring in the future.

4.1.5 Private Civil Enforcement

4.1.5.1 Courts

The court system is a channel through which private parties may press grievances they have against other parties and seek redress. Breach of contract is one area where parties commonly seek resolution of disputes on a case-by-case basis. Private enforcement through the courts can be costly, however, so in practice it may not be a feasible option for smaller claimants. Whether it is prohibitively expensive has not yet been determined. At the same time, since the courts are widely used to settle disputes in most areas of commerce, this mechanisms is relatively familiar and well-understood.

4.1.5.2 Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) has become more popular in recent years. There are numerous types of ADR, the most common being early neutral evaluation of a dispute to try to settle it before litigation commences or progresses; mediation of a dispute; and arbitration of a dispute. ADR can be (but is not always) less costly than civil enforcement through courts. ADR very likely has a place in the new market in several areas, including disputes between customers and UDC's or energy providers, customers and scheduling coordinators, suppliers and scheduling coordinators, and scheduling coordinators and the ISO or PX. The Commission should carefully examine ADR to determine where it may be beneficial to enact regulations requiring its use in the new market. See Section 3.2.3.2 for a discussion of ADR in the context of billing disputes.

4.1.5.3 General Authorities

General authorities that will likely play an enforcement role in the restructured energy services market will include the Department of Justice and the Federal Trade Commission at the federal level, and the Attorney General and State Department of Consumer Affairs at the state level. These agencies can issue injunctions and/or impose fines on firms that violate their market rules. Appendix D presents some of the California business statutes that would apply to retail electric service providers.

4.1.5.4 Industry-Specific Regulatory Agencies

Industry-specific regulatory agencies typically use some combination of the four mechanisms mentioned above -- registration, licensing, bonding and continuing oversight. To give a specific example, some parties suggest that rate regulation under the PU Code be continued for retailers unless they can demonstrate that they do not possess market power. In this way the CPUC would be the enforcement agency for ensuring a competitive market structure. This regulatory function would entail requiring all retailers to show that they do not have market power in retail electric supply in order to obtain exemption from CPUC rate regulation (as FERC does with power marketers at the wholesale level). The CPUC would have continuing oversight to ensure that changing circumstances do not justify re-regulation of rates for retailers previously determined to be competitive.

4.1.6 Self-Enforcement via Industry or Stakeholder Associations

Some parties believe that the industry itself can offer its own policing or oversight, thus reducing the need for regulators to closely monitor complaint-handling. Industries in the United States have used self-policing models such as Better Business Bureaus for more common transactions. In complex transactions such as purchases of automobiles and homes, industries have established independent mechanisms such as arbitration boards to resolve complaints. Other countries have created public-private dispute resolution mechanisms, as will be discussed in greater depth

below. Until such private oversight or enforcement is established, however, the Commission is obligated by law to provide for that oversight.

Self enforcement is an appealing idea that can work in certain contexts. A watchdog agency under the authority of an industry association or a stakeholder association (which may have members and directors besides the firms that make up the industry) can impose sanctions for violation of its rules, but it cannot legally enforce the rules. For example, when an association maintains a "list of approved providers" that it releases to potential customers, it can remove from that list any member firm that violates the industry codes of conduct. If it enacts a certification program, it can rescind the certification of an offending member. These actions may be effective deterrents of undesirable business practices. In some cases an association may require member firms to post a bond that can be used to compensate a party injured by a firm's actions.

4.2 Registration Requirements

[*Note. DAWG parties disagree about whether the registration requirements specified in AB 1890 are adequate from a consumer-protection viewpoint. Among parties favoring strong registration requirements, the predominant view is that the CPUC should lead the effort to develop stronger requirements, including the ability to suspend registration where appropriate, and to seek such legislative authority as may be necessary to implement these requirements. The next two subsections, which were written before AB 1890 was enacted, present different proposals that convey the flavor of the alternative approaches. Section 4.2.1 sets forth a position favoring no CPUC registration, while 4.2.2. sets forth a position describing why and how the CPUC should perform strong registration and oversight.*]

4.2.1 ALTERNATIVE: Minimal Certification Requirements

Private business transactions between suppliers and their customers should not be regulated. Although certification should not be a requirement for transactions that occur in the free market, suppliers may decide it is in their best interest to obtain an independent certification rather than demonstrate their capabilities to potential customers. However, suppliers may need to prove capability before interacting with the systems of the UDC, ISO or PX. Examples of such interactions include consolidated billing by the supplier or UDC, ancillary services bids to the ISO, and demand bids or purchase requests from the PX. Data exchange with those parties may require that suppliers demonstrate that they can provide the required information on a timely basis, with a compatible communication protocol, in the correct format and without error.

Rather than demonstrate capabilities to potential customers (e.g., financial solvency, technical competence, insurance, licensing), suppliers may prefer to join a "registry of qualified providers." The registry could be maintained by a free-market registry service, by scheduling coordinators, or by the ISO. It should be left up to the market to decide if there is a need and to develop the

details. If a regulated entity desires to develop a registry service, the requirements and details should be reviewed by the regulating body to ensure fairness and prevent favoritism toward affiliates. Although pre-qualification by a registry may be needed to protect smaller customers and others without negotiating strength, it should not be a requirement for entry into the market.

Alternative 4.2.1 PRO

Minimal regulatory interference.

Alternative 4.2.1 CON

1. The proposal is not consistent with newly revised Section 394 of the Public Utilities Code, as revised by AB1890.

2. The proposal is not consistent with the way the CPUC and Legislature dealt with unregulated telecommunications providers. Subsequent telecommunications abuses affirm the need for regulatory oversight and enforcement powers.

3. As described above, electric service is a necessary commodity. It is required by law for habitability, in contrast to telephone service.

4. The proposal does not address the relative unsophistication of small business and residential customers in making electric purchase transactions.

5. The proposed registry is an acceptable self-policing effort by electric providers but it should not be exclusive of regulatory oversight.

6. It represents minimal protection of the public interest. In particular, it involves no retail regulation or oversight by an expert agency of market structure and allows retailers with market power to engage in abuses subject only to the antitrust laws, which are costly and slow and not preventative. It also assumes that the entire Public Utilities code is rendered moot with respect to retail generation — which seems not to be the legislative intent.

4.2.2 ALTERNATIVE: Strong Regulatory Oversight of ESPs

4.2.2.1 Summary of the Proposal

The proposal described in this section is based upon two primary principles which are stated immediately below. The following subsections describe elements of the proposal and present PRO and CON arguments for several of these elements. There are no PRO and CON arguments offered for the proposal as a whole.

First, any energy service provider interacting directly with retail customers must be registered, licensed and bonded. This entails filing of corporate information and posting a bond with the CPUC. Upon satisfactory completion of these requirements, the provider receives a license.

Second, the CPUC is the logical lead agency for enforcement. The CPUC can revoke a license if violations of market rules are proved and, when timely action is needed, the CPUC can suspend a license or curtail solicitation of new customers if the likelihood of violations is established by staff or customers.

4.2.2.2 Retail Customer Interaction Compels Licensing and Bonding

Competition will engender the entry of a number of service providers. Some will offer brokerage, some aggregation services, some demand-side services and some will offer services that have not even been envisioned at the moment. Such is an unfettered market.

The issue is whether the retail market will be entirely unfettered. The answer is no. Like almost every other service in the United States, a certain amount of regulatory oversight is necessary to ensure consumers are not defrauded and the competitive market is functioning properly.

Because electric service is a necessity and because consumers are relatively unsophisticated in valuing and understanding electric services, the electric industry will require greater regulatory oversight than other standard retail services. Customer sophistication may develop over time, while the necessity aspect of electric service will become increasingly important as the telecommunications and computer industries mature.

Regulators must focus upon retail transactions between electric providers and retail customers, with an emphasis on small business and residential customers. As with long distance and local phone service providers in California, any provider offering electricity brokerage, marketing, aggregation or equivalent services directly to retail customers should be required to register, post a bond with and be licensed by the CPUC. That way, if any service provider interacts with a retail customer, that provider will fall under the jurisdiction of the CPUC.

Some parties believe, however, that while the smaller customers will need the safeguards of regulatory oversight by the CPUC of electric providers (registration, bonding, licensing and dispute resolution), the oversight required of electric providers, marketers, brokers, etc. in business dealings with larger customers should be much lighter. That is, those firms whose sole business activity is with large customers might only require some minimum registration with the CPUC. This is founded upon the notion that larger customers would have the resources to make their business decisions from a far more well-informed position than the smaller customers.

The purpose of licensing and bonding is to proactively ensure accountability by energy service providers and to ensure that customers have adequate recourse in the event that the provider fails to perform.

4.2.2.3 Providers Not Subject to Registration

Not all retail energy service providers will require registration. The purpose of registration is to ensure accountability and recourse where electric service is provided to retail customers. In some circumstances, accountability is inherent in some energy providers.

For example, municipal or other public entities providing service within their own franchise areas would not fall under CPUC jurisdiction and thus would not be subject to licensing. However, if any such entity were to offer services to non-franchise customers, the same accountability would not exist and then licensing and bonding would be warranted. Non-franchise customers cannot vote, they cannot easily appear at public hearings and they do not reap many of the tax-related benefits available to municipalities.

Energy service companies offering only demand-side management, on-site generation or other services unrelated to purchase of electric service would not need to be licensed so long as those providers are not participating in or benefiting from publicly-funded energy programs, such as DSM or renewable credits. If, however, they participate in a publicly-funded program or if they bundle other energy services with energy brokerage service, then licensing is warranted.

Finally, energy cooperatives should not be required to be registered so long as all cooperative members are owners of the cooperative, and thus enjoy the higher level of accountability and recourse enjoyed by owners.

Other providers, such as brokers interacting with aggregators, generators, companies offering ancillary services and scheduling coordinators are not required to provide a filing or bond with the CPUC so long as their interaction remains with other wholesalers. However, these providers may have to fulfill registration requirements established by the ISO.

Proposal 4.2.2.3 PRO

1. Municipalities that provide electric services in areas outside of their franchise must be treated the same as other private service providers. Customers who live outside of the franchise area of a municipality have none of the privileges or protections of customers who live in a franchise area and can vote new representatives to the municipal board. Moreover, there is no valid legal or policy basis to exempt municipalities doing business outside their franchise area from CPUC oversight. Any argument for exemption, as presented below, would also logically apply to any municipal utility from another state doing business in California. The Tennessee Valley Authority, for example, could begin selling energy services to California customers and claim exemption from CPUC oversight.

2. The purpose of CPUC oversight is to ensure that customers who have complaints against energy service providers have low-cost, adequate redress. A customer without a franchised

voting right has no greater protection than any other customer. That is why CPUC oversight is necessary.

Proposal 4.2.2.3 CON

1. The purpose for registration and bonding is to protect the interests of retail consumers from fraud or failure of undercapitalized providers. Municipal utilities should not be required to post bonds in order to provide services to non-franchise customers as they do not pose the same level of risk that non-utility aggregators do. In fact, municipal utilities, like the IOUs, pose very little financial risk to retail customers. The rationale presented for registering municipal utilities who do business with non-franchise customers in this section does not take into account that municipal utilities are subject to rigorous oversight by their respective city councils and community member-comprised utility commissions, are required to conduct their businesses in an open public forum and therefore, do not pose anywhere the same level of risk that unregulated market participants pose. The oversight responsibilities of the city councils and community member-comprised utility commissions provide customers of municipal utilities with considerable opportunities for redress not available to customers of other energy service providers.

2. In the current monopoly electric utility structure, the reins of power are primarily in the hands of the utilities but in the competitive electric utility industry structure of the future, where customers will be able to choose their supplier of energy services, the reins of power will be held by the customers. In this type of business environment, both non-franchised customers and franchised customers of municipal utilities will be highly valued by the municipal utilities and non-franchised customers will receive services on equal terms as franchised customers. The likelihood that municipal utilities would not provide equivalent services and opportunities for meaningful redress to both franchised and non-franchise customers alike is insignificant, if not zero, considering that the non-franchise customers have a choice to walk and take their valued business elsewhere, as happens everyday in the deregulated telephone and transportation industries, if the municipal utilities discriminates against them.

4.2.2.4 The Nature Of and Rationales For Registration with the CPUC

In order to serve retail customers, non-exempt energy providers should be required to provide to the CPUC and keep updated, their legal name(s), business address, state where incorporated or associated, date of incorporation, articles of incorporation or association, name and title of each officer and director, name, title and phone number of a designated customer service contact person, name, title and phone number of the regulatory contact person, brief description of the nature of business being conducted and disclosure of any civil or criminal action taken against the company or any officer or director for any illegal acts related to the operation of any business for previous ten years. This information gives regulators and consumers the necessary information they need to judge the viability of the provider.

The rationales for this registration requirement are:

a. Retail customers must be able to learn about the owners, the location and financial viability of any prospective provider. In order to ensure uniformity, that information should be on file with a clearinghouse. The CPUC fills that role.

b. In order to guard against undercapitalized, fly-by-night or unethical companies, the CPUC must have a means of screening prospective energy providers. Retail customers, especially residential and small business consumers, will not have the wherewithal to screen prospective providers. The dissemination of misinformation and other abuses experienced in the solar hot water market and the long-distance telephone market have graphically demonstrated the need for the ability to screen providers.

c. Registration preserves the CPUC's jurisdiction over these entities

4.2.2.5 The Bonding Requirement

In addition to informational registration, a prospective provider must also provide either a bond or some alternative insurance that would give customers a fund against which to secure damages attributable to fraud or non-performance. The reasons for bonding are:

a. The up-front costs of entering the electric services market is fairly low. Retailers need only a computer and customer leads. A bonding requirement will therefore not put an undue burden on any prospective new entrant, as its start-up costs are relatively low.

b. Without a bond, it is likely that complainants and their attorneys or representatives will not be able to recover damages caused by failed service providers.

c. The bonding process itself serves as a useful screen against companies or individuals with questionable financial pasts who seek to enter the electricity market. Bonding services will either decline to bond or will require higher deposits from entrants with questionable records.

The amount of the bond would be established based upon the prospective number of customers to be served. For example, a local community provider planning to serve 50 residents could post a very modest bond, whereas a large provider planning to serve customers throughout the state would require a more substantial bond. Energy providers who also offer financial contracts for managing risk may need to be bonded as well, perhaps at an even higher level than the others. The CPUC would be required to ensure that bonding costs do not become so prohibitive that they discourage new entrants. At the same time, bonds or other insurance mechanisms must be adequately secure to protect against anticipated claims by customers. The insurance companies that serve Californians are obligated to provide such assurances in order to offer service in the state. It is anticipated that the costs for energy service bonding should not exceed costs faced by insurers.

4.2.2.6 Why Electric Registration Must Be More Stringent Than Telephone

As discussed above, the registration process needs to be stringent enough to protect customers but not so onerous as to create a barrier to entry.

Proposal 4.2.2.6 PRO

For local telecommunications companies the CPUC has developed a non-dominant carrier registration process that is not overly burdensome. It requires filing with the CPUC the identities of the owners and officers of the corporation, a description of services to be provided and basic financial information to ensure the economic viability of the company.

Telecommunications registration does not require bonding, however. This is a precaution that is necessary for electric service for many reasons.

a. Electric service is generally is more expensive than phone service. Thus greater potential losses are likely and greater protection is warranted.

b. Electric service is a necessary commodity. State statute bans habitation of a residence that does not have electric service.

c. Small consumers will be very vulnerable to commercial exploitation during the transitional period of deregulation. Telephone service deregulation has been phased over a decade, whereas electric deregulation will occur more rapidly.

d. Long distance and OAS deregulation have led to significant consumer abuses and are among the most common consumer complaints in the 1990s.

e. Experience in other locations where direct access has been tried suggests that consumers may be attracted to fixed-price offerings. Such offerings represent an implicit financial hedge or a derivative security, and thus carry a significant degree of market risk. For instance, an energy retailer might offer fixed prices for a calendar year beginning in January, and while winter prices are lower than the annual average the retailer would accumulate several months of overpayment by the beginning of summer. If that retailer then fails to perform during the summer, the amount of overpayment is a loss to the customer.

Proposal 4.2.2.6 CON

While electric service is a necessary commodity, there is no agreement that electric service is more expensive than phone service. If one examines the portion of the electric industry that is being opened up to competition at this time, i.e., the energy costs, one finds that the cost is not greater than the phone bill. This comparison is perhaps misleading.

4.2.2.7 Revocation and Suspension of Licenses Are CPUC Responsibilities

The CPUC's ability to revoke, suspend or limit a license is absolutely necessary for adequate enforcement. In the initial 5 to 10 transitional years of electric competition, new entrants must be clearly noticed that questionable business practices, undue risks and shabby treatment of customers will not be tolerated. The potential for abuse and the serious ramifications of that abuse mandate adequate enforcement powers by the agency. The CPUC's staffing and its expertise on energy matters positions it as the only logical state agency that can be charged with enforcement.

Consumers might also be able to look to civil courts for contractual, tortious or statutory remedies (e.g., under Business & Professions Code Section 17200 et seq). However, these cases would be expensive to pursue and the civil courts are not equipped to handle the load of individual complaints that could occur with the advent of competition. Moreover, the courts will not be well-positioned to establish uniform industry rules where patterns of rule violations or shabby customer service are established. Thus, the CPUC should continue its role as lead enforcement agency for customer complaints about all retail energy services.

This enforcement power should be anchored by CPUC licensing of energy service companies. Without licensing, enforcement of CPUC rules would be ineffectual. The CPUC market rules would include a code of conduct and a set of specific minimum standards of service. Further discussion of such a code of conduct is contained in the next section, and an example with specific rules is given in Appendix D at the end of this report.

The CPUC should have the ability to suspend, limit or revoke a service provider's license depending on the gravity of provider malfeasance. Revocation would be invoked only where due process had been afforded to a provider. However, injunctive suspension or limitation of a license could be imposed upon a showing that CPUC rules had likely been violated by a service provider and that significant damage could be caused by a continuation of service by that provider.

Proposal 4.2.2.7 PRO

Will provide better consumer protection to have an expert agency with regulatory authority over all players.

Proposal 4.2.2.7 CON

1. It could overwhelm CPUC.

2. It does not address market structure issues.

4.2.2.8 Proposed Code of Conduct for Retail Energy Service Providers

The CPUC must require all registered energy service companies to adopt a minimum code of conduct.

Proposal 4.2.2.8 PRO

In the nascent energy services market, companies and customers will be unclear on their corresponding responsibilities and expectations. In order to facilitate smoother transition to a robust competitive market, the CPUC should specify a minimum code of conduct that would be adopted by all energy service companies registering with the CPUC. This code would provide guidance for companies and their employees for all retail transactions. It would be distributed to all employees of these energy service companies and provided to customers upon request. As a minimum code, it would represent the "floor" of what would be expected, but could be surpassed by companies.

Such a code could be used as a standard upon which company actions would be judged. It is neither likely nor desirable for regulators and lawmakers to devise rules and regulations for all possible forms of consumer problems. Thus, regulators would use the minimum code of conduct as a basis for determining the appropriateness of company conduct where a specific rule and regulation does not fit the conduct. Regulators may use the code as a basis for sanctioning a company.

A minimum code of conduct would address the following areas: provision of understandable and accurate information to customers; notification of change of service or intent to disconnect; explanation of denial of service; handling of deposits; handling of complaints; confidentiality of customer-specific information and customers' right of access to their own information; non-discrimination in availability and terms of service. See Appendix D.6 for an example of specific wording of such a code.

Proposal 4.2.2.8 CON

1. Some parties assert that such a code may add confusion rather than order to the retail market due to vagueness and unclear legal status of rules. For example, item 2 in the model code presented in Appendix D.6 requires "adequately reliable, safe, and affordable service." What do these terms mean? Such rules give no meaningful guidance. In addition, many of these conduct issues are already covered by existing provisions of law. Item 13, for example, is already covered by civil rights laws and general consumer protection statutes. The Commission would therefore have to carefully specify the relationship of any new rules to existing laws and regulations.

2. The market and existing laws pertaining to consumer protection and access to customer information can be relied upon to determine appropriate conduct. The explosion of customer options, product combinations and technological developments will occur too rapidly to be

conducive to pre-established rules. The market will sort out appropriate behavior and practices. Default service will be available for those not wishing to participate in the competitive market.

4.2.2.9 Regulation of market structure by CPUC

Modeled on FERC's parallel regulation of the competitive wholesale electric market, this approach assumes that the CPUC still has an obligation under the PU Code to regulate retail energy markets to protect the public interest and ensure that electricity rates are reasonable. All retailers (aggregators, brokers, generators, marketers, etc.) would be "electric corporations" and "public utilities" per Section 216-218 of the PU Code. Each retailer would have to either comply with the PU Code's ratemaking requirements or demonstrate to the CPUC that it lacked market power. For most retailers who are also wholesalers, presumably this requirement could be met by simply showing evidence of FERC approval of wholesale market based sales, unless the retail market presents special circumstances.

Proposal 4.2.2.9 PRO

1. Protects against market power abuses.
2. Provides comprehensive parallel economic regulation of wholesale and retail energy markets.
3. Can be done by CPUC under existing law.
4. Avoids risks of deregulation followed by re-regulation if market proves to have structural problems.

Proposal 4.2.2.9 CON

It could be "overkill" and add unnecessary burdens to the new generation market (but has not slowed entrance of new players at wholesale level).

4.2.3 Permissible Retail Territories for Unregulated Utility Affiliates

Parties have offered two alternatives regarding the geographic areas open to the retail activities of competitive affiliates of monopolies. The first alternative says that such affiliates should be allowed to compete within their parent utilities' service areas. The second allows them to operate outside of their parent utilities' service areas.

4.2.3.1 ALTERNATIVE: Inside the Parent Utility's Service Area

An unregulated affiliate of an incumbent utility should be allowed to compete for customers within its parent utility's existing service area.

Alternative 4.2.3.1 PRO

1. An additional competitive provider of electric service means more competition.

2. Affiliates may be able to offer a wider range of services than the UDC. Some customers may want affiliate service as a matter of informed choice.

3. Inclusion of affiliates maintains the competitive status quo relative to out-of-state utility affiliates and other providers. For example, serving a regional or national chain account would not be possible for the UDC affiliate if it is excluded from serving in its affiliated utility service area.

4. The CPUC already has effective rules governing the conduct of utilities and their affiliates. In addition, the CPUC has enacted rules for behavior of utilities and affiliates in a holding company structure.

5. Some parties assert that favoritism by the UDC is virtually precluded by comparable open access transmission and distribution service and CPUC regulation of customer information access.

6. Allegations (below) that affiliate transaction guidelines have been ineffective are completely unsubstantiated and wrong. Annual audits of financial transactions have never uncovered a significant abuse. Furthermore, the provisions in the restructuring decision addressing affiliate issues are fully adequate to address potential concerns.

Alternative 4.2.3.1 CON

Allowing an unregulated utility affiliate to compete for customers in the utility's service area would substantially jeopardize the Commission's goal of an effectively competitive market for electricity. A critical condition for a competitive market is that all providers are on a level playing field. This condition is unlikely to be fulfilled when unregulated affiliates are cross-subsidized by the utility. While there is always the potential for cross-subsidization between regulated and unregulated enterprises, the likelihood of such actions is significantly increased when the utility and its unregulated affiliates are providers in the same market. Under such a scenario, it is easier for cross-subsidization to occur and more difficult to detect.

The opportunity to cross-subsidize is also facilitated by a holding company structure. All three IOUs either are already under or have applied for a holding company structure. The holding company has a fiduciary responsibility to its shareholders to provide the highest possible returns for a given risk level. The holding company that controls the utility has available to it market information which it can pass to its unregulated affiliates.

The Commission recognized the serious potential for self-dealing despite existing affiliate transaction rules and consequently prohibited any contracts between the distribution utility and its affiliated generating companies. [See D. 95-1-063, p. 71.] Consistent with its policy of

preventing affiliate abuses and its goal of nurturing an electricity market in its infancy to a fully competitive market, unregulated affiliates of the utility should not be permitted to compete in the utility's service area during the transition period.

A competitive market will be most successful if monopoly power is mitigated. Allowing an unregulated affiliate to compete in the parent utility's service territory does not provide the proper assurances against monopoly power.

4.2.3.2 ALTERNATIVE: Outside the Parent Utility's Service Area

Unregulated affiliates of the incumbent utility should be allowed to compete for customers outside of the utility's existing service area.

Alternative 4.2.3.2 PRO

Unregulated affiliates should be allowed to compete to serve customers outside of their utility's service area. There is little potential for market abuses since it is unlikely that the unregulated affiliate would have access to the proprietary information of an outside utility. Thus the unregulated affiliate would provide customers with more choices and enhance competition.

Alternative 4.2.3.2 CON

1. California utilities' market power and brand recognition are so significant as to warrant prohibition of affiliate transactions within California until such time as the competitive market is well established. Moreover, it is politically untenable for the IOUs to be recovering 100 percent of their stranded costs while at the same time increasing stranded costs by pursuing direct access transactions.

2. Market power concerns remain, even when unregulated affiliates compete outside of a utility's service area. The CPUC must be vigilant in monitoring for informal reciprocal arrangements whereby an IOU-owned disco will be more preferential to another IOU's affiliate in recognition that IOU's disco may return the favor to its own unregulated affiliate doing business in the disco's service territory. For example, utility A's disco will likely give preferential treatment to utility B's unregulated affiliate doing business in A's franchise territory because of the ability of B's disco to create problems for A's affiliate doing business in B's franchise territory. In the event that such arrangements, informal or not, are detected, the CPUC must be empowered to revoke the right of an IOU affiliate to do business in California.

4.2.4 Reciprocity for Utilities and Affiliates Conducting Business Under Jurisdictions Other than the CPUC

Utilities that are not under the jurisdiction of the CPUC may have marketing affiliates desiring to conduct retail business in the CPUC jurisdictional area. Can and should restrictions be placed on the retail activities of such affiliates if their parent utilities do not face retail competition in their own service territories? Only one alternative was offered and discussed on this subject, but no assessment was made of the group's support for this alternative.

That proposal called for the Commission to require reciprocity to the extent that these entities do not allow similar access in their own utility service territories, they should be denied certificates to conduct retail transactions within the CPUC jurisdictional area. This would not preclude these entities from doing business in the wholesale market or with the Power Exchange.

The CPUC may implement this restriction by exercising its right to condition certificates to participate in the retail market. In the event that the CPUC may not exclude such entities from the retail market, it should condition the certificates to require that the affiliate provider disclose the fact that its affiliated utility does not provide the same opportunity for its own customers.

Alternative 4.2.4 PRO

This policy will facilitate the expansion of customer choice, because neighboring IOUs with marketing affiliates will more likely consider allowing their captive utility customers to have choice among competitive retailers if that is a requirement to participate in the California retail market. The issue is not that plants outside of California which have rate-based treatment and recovery from their own customers may sell at production cost into California. That would be a pure good for California consumers. The issue is the access to retail customers and the unfair opportunities for out-of-state utilities to engage in wrongful self-dealing and cross-subsidies at the expense of California utilities and other competitors. While individual customers would benefit in California, the opportunities for an expanded competitive electricity market in other states would be left to the whims of regulators and legislators in those states and the imagination of utilities in an effort to stifle competition in their back yards. It is the utilities that must make the commitment to a competitive market to facilitate real change in an expeditious manner.

Alternative 4.2.4 CON

There is an argument that the CPUC does not have legal authority to impose restrictions upon the retail certificates of providers if they are located out of California. This is based upon federal jurisdiction over interstate commerce.

There is also the position that a necessary condition for a successful Direct Access program is for competitive supplies to be available to end-users on a retail basis. Restrictions on a supplier based upon the need for reciprocity between the California IOUs and a supplier's territory would be a barrier to successful deregulation. Not only would these restrictions potentially prevent out-of-state utilities from supplying power at retail in the Direct Access market, it would give an unfair marketing advantage to retail providers with no service territories of their own. Out-of-

state utilities have no control over their public utility commissions or legislatures so that they do not have the ability to influence the pace for retail customer choice. Further, even if these utilities suggested implementing such reciprocal access, there would be a significant delay before it could be implemented. The immediate impacts would be felt without an opportunity for the out-of-state utility to remedy the situation.

4.3 Right to Redress: Dispute and Complaint Resolution

Once markets begin to operate, there will be two problematic categories of activities. First, customer-specific complaints where services provided do not match the customer's understanding of what was offered. This requires some dispute resolution process. The principle of redress is applicable. Second, more systematic marketing abuses where whole classes of customers are being excluded from the market or where unfair or discriminatory practices are being applied. Systematic abuses will require enhanced regulatory oversight.

The Commission has provided the means by which redress for disputes has been available to individual customers and to advocacy groups. As the industry is restructured, everything must change to some degree. As a tightly regulated industry gives way to an increasingly competitive one, there will probably be a greater level of consumer disgruntlement over transactions issues, as opposed to CPUC-regulated price issues. As a philosophical approach, parties believe that consumers must be asked to act responsibly — to "pay the price" for mistakes they make — and hope that these mistakes contribute to consumer education about the industry. It would be a mistake to design a redress process on the presumption that the consumer was right and the supplier was wrong. Consumer ignorance will surely lead to many consumer misjudgments, but these should be resolved through education rather than specific complaint resolution.

For those disputes where a legitimate complaint exists, a mechanism for redress may have the following broad features:

(1) consumers should have no cost or low-cost access to redress;
(2) dispute resolution forums must be neutral;
(3) mediation should be encouraged;
(4) penalties imposed upon providers should be used to solve industry problems;
(5) complainants should be able to access CPUC-compiled market conduct data consistent with confidentiality requirements; and
(6) the CPUC should be able to refer patterns of abuses to other authorities.

Each of these features will be briefly explored in the following subsections.

4.3.1 Consumers Should Have Appropriate Access to Redress

Where complaints by consumers can not be readily resolved by a service provider, an individual consumer should be afforded access to regulatory redress. This is the status quo and it should be preserved during the transitional years, at the least. There are at least three versions of how such access might be provided.

[1] *Prompt, No Cost, Effective Access*. Regulatory oversight must continue to ensure that there are prompt, no cost and effective forums for receiving customer complaints against electricity providers, resolving the complaint satisfactorily, and instituting investigations where warranted. This access must provide complaint resolution for limited and non-English speaking customers. Consumers should have the right to petition for enforcement actions. Pending resolution of any investigations against providers charged with defrauding large numbers of consumers, the provider should be ordered to post a bond sufficient to satisfy any likely judgment if the provider's place of incorporation is outside of California or where there is evidence of financial instability.

[2] *Low Cost Access.* Access to low-cost regulatory relief means that the consumer should not be charged any filing fees to initiate the process and assessment of costs for pursuing regulatory relief should be reasonable. It does not mean that the time spent pursuing a case or travel and out-of-pocket costs will be necessarily recovered by the complainant regardless of the outcome. However, where a party prevails in a regulatory complaint, the damages awarded should include reimbursement of costs incurred in pursuing an action in addition to restitution normally awarded by the CPUC. This low-cost redress is essential if the Commission is to encourage consumers to bring complaints to their attention. It is also necessary to level the playing field advantage enjoyed by better-endowed providers.

[3] *Balanced Redress Mechanisms*. Consumer complaints should be screened to determine their merits. Consumer misinformation and confusion should not lead to excessive costs for providers. Dispute resolution mechanisms should focus redress on failure to deliver services, not consumer confusion about the service. Providers falsely accused should not have records compiled that commingle complaints dismissed with complaints settled.

4.3.2 The Forum Must Be Neutral

The forum in which complaints are resolved must be neutral. The arbitrators need not be administrative law judges, but they cannot be representatives of or affiliated with energy service providers. Ideally, the forum would use ***trained but local arbitrators*** to conduct formal hearings and render recommendations that would be reviewed by the decision authority. An evidentiary record should be kept, but it might be taped rather than transcribed.

The Commission's current expedited complaint process is an adequate process by which formal complaints can be cost-effectively heard and decided.

4.3.3 Mediation Opportunities for Complaints

Mediation and other alternative dispute resolution tools should be encouraged. However, they cannot be compulsory, nor can a consumer be penalized for not submitting to mediation.

As a means of encouragement, local mediation should be made available to an individual complainant within two weeks of filing a complaint. If mediation is chosen by both parties, the individual consumer should have available the presence of a trained, knowledgeable advocate or a qualified intervenor advocacy group representative at the mediation to assist on behalf of that individual.

If the parties do not choose mediation, then the expedited complaint process should be made available to the complainant.

4.3.4 Disposition of Penalties Collected

Not all complaints will result in penalties imposed upon service providers. Most complaints will either result in restitution to the complainant or will be found to be warrantless. However, some believe that where a pattern of abuses is discovered and proved, the regulatory agency should be empowered to impose penalties upon a licensed service provider. This may require new statutory authority. Severe, systematic violations may result in license suspension or forfeiture of bonds. Where a financial penalty is assessed, the proceeds should be applied to promotion of consumer education, advocacy and/or a damages pool which would be available to provide restitution for those who received judgments but were unable to collect from the provider.

4.3.5 Access to CPUC-Compiled Data

As part of its on-going market conduct oversight responsibilities and as part of its customer education duties, the regulatory agency will be compiling data about the complaint records, financial viability, prices and service quality of any and all service providers licensed to do business in California. Much of this data may be made available to consumers who are shopping for energy services. Some believe, in addition, that all of this data should be made available to complainants that have filed formal complaints to appropriate authorities about an energy provider. Others believe only relevant data should be made available and it should be subject to confidentiality restrictions.

Some believe that in assessing a complaint against an energy provider, the agencies must consider not only an individual isolated complaint, but also whether a pattern of inappropriate business

practices is extant. Complainants must have access to such data and must be able to enter it into an administrative record in order for the data to be fairly adjudged by the Commission.

4.3.6 Resolution of Systematic Patterns of Abuse

Ongoing review of market conduct will lead to identification of patterns of abuse or misconduct by energy service providers. There are several alternative approaches to resolving systematic patterns of abuse. These have not been fully reviewed or assessed, and are presented to provide a sense of the range of options expressed by some within DAWG.

[1] *Publicizing Market Abuses*. In order to make maximum use of limited staff resources, the regulatory agencies should share their market conduct findings with appropriate public and private bodies. One of the regulatory agency's roles could be to facilitate public prosecution of misleading information. For example, when companies engage in inappropriate marketing transactions, the state attorney general, local district attorneys and consumer class-action attorneys can utilize the state's Business & Professions Code to discourage such behaviors and gain remedies for victimized consumers. A regulatory agency could serve as a clearinghouse for complaints.

A regulatory agency's public intake functions are essential, low-cost means of identifying such abuses. The prosecutorial authorities can expeditiously act once a regulatory agency makes public the fact that complaints to the regulatory agency indicates a pattern of deceit. While the regulatory agency would not be acting as a referral panel, the disclosure of complaint information will enable interested private parties to pursue remedies independent of the agency. Such an approach is now operative at the CPUC. A regulatory agency's resources are best utilized as a collector and distributor of information first, and a prosecutor second. However, where no private attorneys are willing or able to pursue a case, the regulatory agency is obligated to self-initiate regulatory action or to instruct its staff to pursue civil or criminal remedies, where warranted.

[2] *Regulatory Sanctions*. A regulatory sanction approach could be used when problems are isolated to specific firms or providers of services. As noted previously, the telephone "slamming" practices have been concentrated on particular language and cultural communities by a few operators. Such a problem is best resolved by regulatory agency investigation, prompt customer redress, and where warranted, by sanctions against such operators. For this to be workable, however, requires that the regulatory agency have remedies that are sufficiently strong to be effective deterrents. This might imply that all providers are certified to do business, or that bonds have to be posted for good performance relative to explicit codes of conduct, or both. Egregious practices might result in certificate revocation or forfeiture of the bond.

[3] *Statutory Reforms of the Marketplace*. If widespread patterns of abuse are found across multiple providers of energy services, this may be evidence that the market rules themselves are

too weak or are ineffective. Legislative remedies may be required in this instance. Since a greater portion of the electricity industry may be operating outside of the CPUC's traditional corrective authority, it is feasible that legislative remedies may have to be sponsored by the CPUC or other regulatory agencies supervising the industry.

4.4 Customer Representation and Advocacy

Under the aegis of a fortified consumer department at the CPUC, as envisioned in the Vision 2000 report, the Commission should promote the intervention and advocacy of consumer representation of small electric customers. With the expectation that increased numbers of marketing abuses such as slamming and fraud will a likely by-product of an emergent competitive market, the public would be well-served by the existence of knowledgeable and capable consumer representation.

Over the past two years, utilities and consumer advocacy groups have met to improve the intervenor compensation system. Utilities are concerned that the current compensation system discourages alternative dispute resolution and that it may be unfairly saddling the regulated utility with costs that should be partially borne by competitors. Intervenors have pointed out how the current rules are unwieldy, difficult for new or emerging intervenors to use, and are not suited for an increasingly quasi-legislative process. Thus far the talks have failed to reach any consensus, and an impasse has existed since February 1996.

It is incumbent upon the Commission to review the intervenor compensation rules and to initiate a revision of these rules so that they encourage small customers to bring market abuses and market failures to the attention of the Commission in a capable and professional manner. Some parties assert that the Commission should look to supplemental funding devices, such as a licensing or registration fee for energy providers or a restitution bond posted by new entrants, as a means of providing intervenor compensation.

4.5 Market Monitoring and Oversight

The following subsections offer some proposals for market monitoring and oversight. These proposals represent the views of certain parties only, not the entire DAWG.

4.5.1 Proposal: Active Commission Role in Market Facilitation and Monitoring

Consistent with the AB1890 mandate, the Commission should play an active role in monitoring the nascent competitive marketplace. Faced with overarching regulatory objectives to make competition work and to make it work in accord with state policies to preserve equity principles as well as to prevent certain communities from being chronically under-served, regulators will need to ensure that consumers are provided the tools and opportunities to participate in a

competitive market. Regulators will need to ensure that redlining does not occur, that non-discriminatory prices and terms are offered to similar customer classes, and that marketing abuses are met with swift action, including full redress to victims. With the new reliance upon the competitive market to provide basic electric and telephone services for small consumers, the Commission's new challenges are, in the simplest of terms, to:

1. promote a competitive marketplace with multiple buyers and sellers;
2. arm all consumers with the information needed to make informed choices; and
3. help to aggregate small customers, especially in traditionally under-served communities.

Active monitoring will require the Commission to increase its information gathering and dissemination activities. Adequate information to consumers, both for purposes of protection and education, should include the following:

- Monthly listing of licensed energy providers;
- Bi-annual listing of price comparisons and energy providers;
- Bi-annual listing of consumer complaint information;
- Annually-revised glossary of energy service terms and description of services;
- Telephonically-accessed listing of service providers whose license has been revoked, suspended or limited and an alert about unlicensed providers; and
- Representative service benchmarks for different types of customers upon which comparisons of service can be readily made.

This information should be made available to customers at little or no cost. It can be distributed though CPUC offices, community-based organizations, other state agencies and by all licensed energy providers. It could be provided in the form of a standardized matrix similar to that set forth in the Proposed Decision of ALJ Wong in the Commission's Universal Service docket.

Beyond simply providing price comparison information and evaluative services, the CPUC should monitor private consumer education by market competitors and non-profits to ensure the accuracy of the information. Detailed proposals for this activity are described in Section 5.3.3. Finally, small customers will need to be aggregated in order to gain adequate market leverage to benefit from electric competition. Section 5.3.4 discussed some ways the Commission could facilitate small-customer aggregation.

These concepts require no new bureaucratic structure, as the Commission's Customer Service Division and existing community-based organizations can monitor and oversee dissemination of such information. The incremental funding requirements are modest, and the information to be collected and disseminated is consistent with the Commission's continuing market conduct activities.

4.5.2 Proposal: ESP Information Disclosure Requirements

This proposal would require ESPs to provide each customer or applicant for service the following:

1. The California Public Utilities Commission identification number of its registration to operate as an ESP within California.
2. The address and telephone number of the California Public Utilities Commission to verify its authority to operate.
3. A copy of these Consumer Protection Regulations.
4. A toll-free number to call for service or billing inquiries, along with an address where the customer may write the service provider.
5. A full disclosure of all fictitious or DBA names.
6. The names of billing agents it uses in place of performing the billing function itself.
7. Rate information as required by the Commission.
8. Declaration of being bonded or not.
9. Service provider address or place of business.

4.5.3 Proposal: Uniform Disclosure of Pricing and Service Terms

Another proposal suggests that every retail electric supplier will provide a written contract to a residential or small commercial customer for the retail sale of electricity, which shall contain the following disclosures and minimum terms:

1. Recurring and non-recurring charges must be disclosed in a uniform manner to be determined by the Commission. The total monthly recurring price shall be disclosed on a total cents per kWh basis. Up front or non-recurring charges shall be totaled and the effect of these charges on the recurring price of electricity shall be disclosed.

2. The customer's right to redress will be explained in a uniform manner to be determined by the Commission, including low-cost and prompt complaint and dispute resolution. Some argue that redress should be at no cost to the consumer. The Commission will also specify mechanisms for oversight and monitoring customer complaints and energy providers against whom there are numerous complaints and/or disputes.

3. How the supplier handles customers' personal information, including an explanation of how the customer can control release of sensitive personal information.

4. Explanation of the customer's options and rights regarding switching of service to another provider or the UDC and any fees or costs charged under the contract for switching service.

5. Practices used by the ESP for determining creditworthiness, and disconnection practices when credit has been revoked by the ESP.

6. An explanation of the customer's obligation to pay CTC charges.

7. Explanation the ESP's adopted code of conduct and where copies can be obtained, or where a code of conduct has not been adopted by the ESP, and citation to that effect.

Chapter 5. Consumer Education

This chapter addresses the consumer education issues the DAWG parties have discussed both before and after the August 30 Report. Various issues addressed in the August 30 Report are included in this chapter, along with additional material on development of a Consumer Education Plan.

The DAWG members envision three primary consumer education activities taking place in 1997 and beyond, to enable customers to

- understand the benefits and pitfalls of direct access,
- exercise meaningful choices in the new electricity market, and
- recognize and seek remedy for the market abuses that may occur.

[1] Consumer Education Plan. AB 1890 has revised Public Utilities Code Section 392(d) so as to charge California's electrical corporations under CPUC regulation to devise and implement a Consumer Education Plan (CEP). Because California's major electric utilities are at present the primary electric corporations, as defined under P.U. Code Section 218, they should be charged with the responsibility to lead the development and implementation of that CEP. Once developed, the electric utilities will need to submit the CEP to the Commission for approval. [The Commission should note, in addition, that the category "electrical corporations" to which Sec. 392(d) applies is broader in scope than the major IOUs, and hence the Commission will need to address how to coordinate the activities of all such entities with regard to the CEP.]

[2] Oversight, Monitoring and Consumer Access to Market Information. The Commission is obligated to develop and perform a unique role in providing oversight, monitoring, and consumer access to information about providers and service offerings. Some believe the CPUC should also act affirmatively to foster access to competitive services in communities that might not otherwise be fully served in the new market environment. The monitoring and oversight aspects, which relate to consumer protection more than education, are covered more fully in Section 4.___ of this report. Market information and efforts to assist under-served communities are discussed below.

[3] Consumer Education Trust. In accordance with restructuring decision D. 95-12-063, we anticipate the formation of a Consumer Education Trust fund to, among other activities, enable community-based organizations to participate in consumer education programs.

Following an overview of the objectives of consumer education, each of these activities is described in the sections which follow.

5.1 Educational Needs and Objectives

5.1.1 Consumer Needs

Most parties agree that consumer education is a key factor in achieving meaningful consumer choice. AB 1890 has established that electricity consumers should be provided with sufficient and reliable information to compare and select among products and services provided in the electricity market, and with mechanisms to protect themselves from unfair or abusive marketing practices. Meaningful choice is the potential to achieve improvements in value received from expenditures made, by permitting individual consumers to select from market options with quantity or quality differences. As explained in Chapter 2, customers have the right to know, which is generally agreed to mean that customers should both have access to information and the means to understand how to use available information to make intelligent choices.

With the new reliance upon the competitive market to provide basic electric services for small consumers, the Commissions new objectives can be summarized as:

1. Promote a competitive marketplace with multiple buyers and sellers.
2. Arm all consumers with the information necessary to make informed choices through multilingual and varied media educational efforts, particularly targeted toward the most vulnerable.
3. Direct educational programs toward informing communities about potential benefits and abuses under deregulation, including how to get the best package of services, how to safeguard themselves as consumers against abusive practices, and what to do in case of fraudulent practices affecting them.

These three elements are essential to a societally efficient competitive market. This underlying premise compels the CPUC to take actions to inform consumers adequately about their choices of service and service providers, a goal that can be accomplished with four strategies:

[1] Make available price and quality comparisons. DAWG Parties disagree fundamentally on which prices and qualities of service should be provided by the Commission. Some argue for the Commission providing such data for all providers, both unregulated retailers and regulated UDCs, whereas others argue that the Commission should provide only UDC price and quality data as a benchmark against which consumers may compare other service offerings.

[2] Monitor customer education conducted by private participants and administer an education trust fund for the electric industry.

[3] Work to help mitigate educational barriers to meaningful customer choice, especially in traditionally under-served communities.

[4] Monitor customer complaints and alleged abuses by providers, both in terms of how well educational efforts are enabling customers to report problems and complaints as well as the level of potential fraud or abuse by new providers. Initiate investigations of providers where there appear to be patterns of abusive practices.

5.1.2 CPUC Responsibility to Consumers

The Commission must accept significant customer education responsibilities, guided by the principles of Chapter 2 — to make competition work, to make it work in accord with state policies to preserve equity principles, and to prevent abuse and foster competition in all communities, especially those that are chronically under-served. Regulators will need to ensure that consumers are provided with the tools to participate in a competitive market.

Most agree that the CPUC must maintain an active role in a deregulated electric power industry similar to its role in telecommunications by providing a framework in which competitive players operate in a structured market. Since many elements of restructuring span beyond direct access, it is essential that the IOU/UDC play a major role in implementing what we have labeled as the Consumer Education Plan (CEP). The initial wave of consumer education will need to heavily involve electrical corporation resources and information delivery systems, with CPUC oversight as dictated by AB 1890.

Even under the traditional regulatory paradigm, certain residential customer groups have been under-served relative to other customers. In telecommunications, rural areas, low-income and minority groups, especially those with language diversity, were not as well served as other customer groups. In a competitive markets, under-served communities will increase as private markets function to stratify social and economic classes. Residential consumers will be cherry-picked because the underlying objective of the competitive market is to discriminate between those receiving cross-subsidies and those funding cross-subsidies. Unfortunately, the social objective of non-discriminatory electric services (c.f. Public Utilities Code 451, et. seq., 453 et. seq.) is undermined by this competitive reality.

Some believe it is incumbent upon the Commission to pay special attention to potentially under-served communities (e.g., rural areas, minority groups, seniors, renters, low-income, inner city and areas served by antiquated equipment). In a competitive electric market, market outcomes for some under-served communities may be determined by technical factors, such as distribution constraints or unusual climatic factors, that may make these communities less attractive to aggregators. According to this viewpoint, the Commission should try to prevent or correct any discrimination, whether intentional or inadvertent, that is engendered by the competitive market.

Others believe the Commission should recognize that the communities referred to may be avoided by retailers due to legitimate technical and economic factors. According to this viewpoint, the Commission should recognize that such selection by retailers will take place as a normal result of competition, and should not attempt to control the outcome of legitimate market behavior. Of course, if and when illegal discrimination occurs the Commission should take appropriate action to eliminate it.

5.1.3 The Need For Flexibility

Many aspects of direct access remain uncertain, making it difficult to specify fully the design elements of specific education efforts at this time. For example, the DAWG members are uncertain as to the rapidity of the direct access phase-in, or the selection mechanism that will be used to determine eligibility for direct access in 1998 if it is limited. Also, it is not clear how interested smaller customers will be in direct access. Finally, we expect that as-yet-undefined load profiling and aggregation rules will significantly influence the eventual penetration of direct access into the small customer market segment.

As a result of this uncertainty, the CPUC must put into place educational efforts that are flexible, and can be modified on short notice as other aspects of direct access fall into place during 1997. It would not be appropriate, for instance, to design a program with significant mass advertising directed towards small customers, only to find that there are virtually no marketing firms interested in providing direct access service to small customers. Such a result would create consumer skepticism, and could harm the long-term development of a competitive generation market. However, general education for consumers about the changes in utility distribution and retail functions is required, regardless of how the residential retail market develops.

Irrespective of the size of the small customer market or the level of customer interest, a certain basic amount of information needs to be conveyed to small customers regarding the possible benefits and the potential for marketing abuses or fraudulent practices. Customers need to know how to recognize the positive value from direct access, and how to seek redress should they be victimized by unfair marketing practices. Since we cannot fully anticipate all the creative opportunities that may arise, for the great marketers and the unscrupulous alike, flexibility is needed in this area as well.

5.1.4 The Virtual Direct Access Option

While we cannot yet predict the interest of competitive marketers in bringing Direct Access to small customers, Decision D. 95-12-063 has ordered that all customers should be able to choose Virtual Direct Access as soon as they have interval meters. The Virtual Direct Access Option allows the customer to remain a full-service customer of the UDC, but to be charged for electric service according to the hourly spot prices determined by the Power Exchange (PX).

As the Decision correctly argues, hourly price signals offer the possibility of increasing the overall efficiency of energy consumption by bringing the prices facing all customers into line with costs that vary by time of day. For most small customers, however, such hourly price signals will be a completely new experience. And because Virtual Direct Access is the only new option that we know for certain will be available to all customers, it is essential that the Consumer Education effort ensure widespread understanding of how this option will work and the criteria customers should assess in deciding whether to choose it.

5.2 Consumer Education Plan

5.2.1 Introduction

Although the August 30 DAWG Report set forth a number of different options for choosing a lead entity to direct education efforts, the Legislature decided in AB 1890 that the "electrical corporations" will be responsible for developing and implementing a Consumer Education Plan (CEP) during 1997. Representatives of the three major investor-owned utilities have agreed to take on this responsibility, and to work closely with stakeholder groups to seek consensus on their efforts.

In broad design, the DAWG envisions that the utilities would jointly select an outside consultant to assist in fashioning a CEP, and perhaps in developing and actually delivering key messages to consumers. We see this as both efficient and effective, by avoiding duplicative development of possibly inconsistent advertising messages in different parts of California. Use of an outside consultant creates greater opportunity for CPUC and stakeholder involvement in the process of developing the CEP. For example, we expect the utilities would involve stakeholders in developing the scope of work for the consultant prior to issuing a request for proposals.

We encourage the CPUC to support participation by municipal utilities in developing the CEP. To the extent that mass media advertising is used, it is not possible to target such advertising to selectively avoid customers of nearby municipal utilities. Close coordination is necessary to avoid potential customer confusion.

When the need for a utility-led process for developing a CEP became apparent, the DAWG Consumer Protection and Education subgroup created a "Consumer Education Plan Group" (CEP Group), composed of communication experts from the three utilities. This group has held several meetings to initiate the process of developing the CEP. The next four sections reflect primarily the findings of this group, supplemented with issues discussed in DAWG meetings.

5.2.2 Goals of the Consumer Education Plan

There are four simple and straightforward goals that must be achieved in order to meet overall consumer needs:

1. Minimize consumer confusion over the changes in electric utility business structure;
2. Educate consumers about the benefits and pitfalls that may be associated with direct access opportunities;
3. Increase consumer understanding of potential market abuses and opportunities for consumer recourse; and
4. Raise awareness of what consumer choice means in the emerging marketplace.

It is important that educational efforts lend themselves to performance measurement, where practicable, so that the success of consumer education activities can be assessed.

The CEP should be developed consistent with the following principles.

First, traditional and non-traditional forms of communication media should be used to ensure maximum consumer reach. Because of the need to reach as many consumers as possible, the CEP should use a diverse range of approaches to seek out consumers who might not pay attention to standard communication media such as newspaper or television advertising.

Second, the program needs to be constructed from the start as a multi-lingual campaign. In other industries, there is concern that non-English-speaking market segments are often targeted for abusive marketing practices or miss opportunities because they are unaware of them, and such is likely in the emerging electricity market as well.

Third, consumer information needs should drive the messages and their presentation. The CEP must be designed in a flexible, iterative manner, with sufficient market research incorporated in the design to tailor the messages to respond to measured consumer needs.

Finally, participation by representatives of various target consumer segments is crucial. Involvement in the CEP of other stakeholders, including retailers targeting smaller customers, while not a substitute for measurement of consumer needs, is nevertheless very important to ensuring that needs are not overlooked and that messages are crafted in a sensitive and effective manner.

5.2.3 Responsibilities of the CEP Group

The three investor owned utilities are willing to take the lead in developing and implementing the CEP. One argument for this is that if implementation of the CEP is assigned to a party that is not well known to consumers, further education would be needed to introduce this new party to consumers, which will further complicate the education process.

The CEP Group envisions the role of the consultant to be one of facilitating the development of the CEP by working with representatives of the three utilities, the CPUC, stakeholder groups representing low-income, elderly, non- and limited-English speaking and other consumer groups, and retailers targeting small customers.

The consultant will need to have experience developing broad-scale consumer education campaigns targeted at diverse audiences. Some of this experience should be with populations similar to California in their ethnic and social attributes. Additionally, the consultant should have some implementation experience, in order to provide the CEP Group with a realistic assessment of what does and does not work. In order to ensure effective control of expenditures, the contract could be structured in phases. For instance, Phase I would be a contract for working on development of the CEP and the specific messages to be conveyed to consumers. If there is a role for the consultant in implementing the CEP, this would be addressed in a separate Phase II contract.

Some parties believe the CPUC should designate a neutral entity — perhaps itself — to which customers may direct questions and from which they may receive information. Although most consumers will naturally turn to their current utilities for information, these parties believe that a statewide, public source of information is needed to function in parallel with the implementation of the CEP. Whether the CPUC decides to perform this role itself or to designate another entity, the CEP would need to address how to inform customers about this entity. The CPUC's role in delivering education and customer information is discussed further in Section 5.3.

It would be advantageous to move forward quickly to create a Consumer Education Trust, and to begin the process of engaging Community Based Organizations (CBO's) in the educational process at the outset. This will allow CBO efforts to proceed in a coordinated manner alongside implementation of the CEP. The Consumer Education Trust is discussed in Section 5.4.

Parties vigorously debated the role of the consultant in implementing the CEP through paid communications (e.g., print, radio and television advertising) crafted to reflect a uniform statewide message. Some parties believe that using the consultant in this manner assures an arms-length process that may allay concerns marketers would have about the extent of direct utility involvement in education efforts. To the extent that local community differences are minor, there may be economies gained by using a uniform advertising approach. Others believe that the utilities should be free to use their existing advertising agencies, to target the specific needs within their service territories (consistent with the goals and approaches in the CEP, of course). Utilities argue that this latter approach can be implemented faster, and with greater confidence of success. They also believe this latter approach will mitigate consumer confusion regarding the perceived sponsor of the educational materials. This could be important in terms of gaining consumer trust regarding the advertising message. Resolution of this issue should be attempted by the CEP Group in further meetings, and with the assistance of the consultant.

Regardless of the role of the consultant, the level of control by outside parties, and degree to which paid communications are used, existing utility communications should be a key part of educational efforts. Newsletters and other forms of bill inserts are a relatively inexpensive and targeted vehicle for small customer education that should not be overlooked.

The utilities, facilitated by the consultant, are willing to make billing envelope space available if so ordered by the Commission to meet regulatory requirements, subject to competing requirements for using this space for legally-mandated inserts, and will produce common materials to the extent appropriate. Some parties go further and argue that these bill envelopes, paid for by all ratepayers but legally owned by the utilities, have additional room into which lists of qualified, certified aggregators may be inserted along with customer information about how to evaluate their service offerings. This vehicle helps reduce the significant transactions costs facing any service provider seeking to enter the mass market. Notably, this list can be distributed as an information insert in a UDC's billing packet, much as rate increase notices are distributed today. The incremental costs of the insert could be defrayed by a contribution from those aggregators who are listed in the notice. Other methods of cost reimbursement are addressed in Section 5.2.6.

Other parties caution the Commission to recognize what legal limitations exist for utilities to make bill envelope space accessible to other entities when deciding what to require as bill inserts. Going beyond general education and actually requiring names of competing retailers and retail options may be inappropriate.

5.2.4 Key Messages

Refining the key messages to be presented to consumers, through research and stakeholder involvement, will be a critical part of the effort to develop the CEP. As a starting place, we list some of the key messages that have been identified by the CEP Group as themes to be targeted to all audiences:

Change is coming.
Consumers will have choice.
Consumers may see benefits.
Consumers do not have to do anything if they wish. to continue "business as usual" service.
Consumers need to be careful about potential marketing abuses.
There is a place to go for further reliable, neutral information.
Some aspects of the changes are not yet known, so stay tuned for further information.

The experience of the Caller ID Notification Plan, which is described further in Section 5.2.7 below, suggests a somewhat different set of potential key messages:

Local utilities will offer new service options, and companies other than the local utility will be selling electricity.

Customers will have the right to choose these other services or stay with the local UDC.
In making a choice, the customer must understand prices, risks, and their own usage patterns.
Utilities will provide customers with personalized energy use profiles if they are reimbursed for their costs.
The CPUC and/or specified others will provide customers with energy shopping information.

There are a number of assumptions about consumers and about the pace of restructuring which underlie this choice of key messages. For instance, we are assuming a high degree of consumer skepticism based on experience in telecommunications restructuring, so the availability of default service from the existing utility provides a familiar backdrop for consumers who wish to evaluate competitive alternatives. We are also assuming that advertising and other educational efforts will need to begin before key elements of restructuring have been firmly established, so the concept of restructuring as a dynamic, evolving process needs to be clearly conveyed, or else consumers will draw negative conclusions when definitive answers to their questions are not available.

5.2.5 The Consensus-Based Process

The DAWG parties share a general concern about the brevity of time remaining to develop and implement an effective CEP to ensure the smooth and equitable opening of direct access on 1/1/98. This legitimate concern inevitably translates into an argument against trying to achieve broad stakeholder consensus about the strategies and implementation details of a CEP. At the same time, to be effective the CEP must have stakeholder involvement and support, for the variety of reasons discussed earlier in this chapter. There is no question that development and implementation of the CEP must transpire in an environment that allows effective involvement by a variety of stakeholder interests, but this requirement may be implemented in a variety of ways. The Commission should therefore authorize a process that will allow broad participation yet cannot be delayed by an inability to make decisions.

Some of the DAWG parties assert that the utilities responsible for managing the CEP should organize a consensus-based process that will provide ongoing input about CEP development, consumer education strategies, and specific consumer materials such as bill inserts. Such a consensus-based process need not function as a review board that would have veto powers over CEP development. Timely development of educational materials is critical, so the CEP Group must have the authority to move forward when necessary, even where there is a lack of stakeholder consensus. At the same time, the utilities may be reluctant to move forward definitively where there is serious dissent and the potential for parties to challenge their efforts at a later date. These parties recommend therefore that the CPUC appoint a "referee," either from within its own staff or from another state agency, to serve as an independent, neutral party that utilities and other stakeholders can rely upon to arbitrate disputes.

5.2.6 Funding

Utilities should be permitted to recover the incremental costs associated with CEP development and implementation. DAWG members recognize that providing such funding is a necessary precondition to obtaining utility involvement in the CEP. Such funding should be consistent with the direct access implementation funding described in Section 376 of recently AB 1890, and should not result in any rate increase during the rate freeze period through December 31, 2001.

The costs of developing and implementing the CEP should be allocated fairly across the utilities. One way to do this, one party suggests, is to assign to each utility a share of the total cost that is the same as that utility's share of total 1996 kWh sales for the three IOUs.

Although funding recovery should be conditioned on the reasonableness of utility expenditures, the DAWG members do not anticipate the need for an explicit reasonableness review. As a result of the consensus-based process, and reliance on the CPUC-appointed referee, expenditures should be deemed reasonable, absent a *prima facie* demonstration to the contrary. (Good faith reliance on the judgments of the CPUC referee — mentioned in the previous section — should be *per se* reasonable). Some parties believe that utilities should utilize a portion of the current consumer education funding that is already established in rates for the CEP program.

The CEP Group recognizes the interest of many parties in developing ballpark estimates of likely CEP funding requirements, but it is not able to do so at this time. One party suggests that, to allow the education effort to move forward, the CPUC should authorize an initial expenditure of up to $10 million for 1997 statewide activities, excluding Consumer Education Trust funding. This amount may be reduced if the CPUC takes a strong role in establishing itself as the neutral entity to which customers can turn for information. In any event, the work of the CEP Group and its consultant will be required to establish a realistic, comprehensive budget for the program.

5.2.7 Experience with the Caller Notification Education Plan

The Commission has demonstrated the efficacy and effectiveness of community-based education in its implementation of the Caller Notification Education Plan (CNEP). Recognizing that the introduction of CallerID would present new and important impacts upon telephone customers due to the automatic release of sensitive personal information (i.e., customers' unlisted phone numbers) to anyone called, the Commission required that Pacific Bell and other phone providers conduct a "bottom-up" education and "opt-out" plan as a precondition for the commencement of CallerID service. Because Pacific Bell was determined to be the primary financial beneficiary once this service was offered to customers, the Commission required Pacific Bell to pay the full $32 million education program cost for the CNEP.

Although the purpose and need for education are very different between CallerID and electric industry restructuring, some parties believe that lessons learned from the Pacific Bell program may be useful when considering policies for electric industry restructuring. The efficacy of that approach to customer education is discussed in depth in "Evaluation of the October 11 Pacific Bell CNEP on CPN Delivery," by Professor Brenda Dervin of Ohio State University. That report, commissioned by the CACD and delivered on November 21, 1995, establishes a number of important principles for educating customers about changes in utility service.

Some features recommended by the Dervin report and adopted by the Commission include:

[1] *Independently Crafted Messages*. Dervin stressed the need for involving community representatives in producing the campaign messages. For CNEP, the Commission approved the hiring of a nationally recognized media consultant to develop themes and mass advertising and sought the input of intervenors to refine the proposed themes.

[2] *Use of Community Based Organizations (CBOs)*. Dervin emphasized the use of high involvement/high interaction outlets and recommended that at least 50 percent of the campaign be implemented out in the communities. Recognizing the educational advantages offered by the state's network of non-profit CBOs, the CPUC required that these CBOs be hired to conduct customer education.

[3] *Early and Concerted Efforts*. A concerted education plan should commence six months prior to the beginning of the new regulatory scheme and be continued through the transition. The campaign must be iterative and sustained, according to Dervin. Accordingly, the CNEP began educating customers almost 6 months prior to the introduction of Caller ID service in California. The $32 million plan elicited so many customer responses that Pacific Bell could not accommodate the crush of customers seeking blocking protection, and implementation was delayed until customer responses could be completed. The plan is to continue for one year after the introduction of the service.

Drawing upon these lessons from telecommunications, community-based programs should make the campaign relevant to customers. Electric restructuring is going to require a new awareness by customers of matters that had been heretofore largely handled by the monopoly utility. It will be essential that customers are educated, in simple terms, as to why they should care. The message must be interactive and accessible to all customer groups, including multi-lingual and multi-cultural communities. In addition, consumer education should be designed to prevent foreseeable abuses. Telecommunications deregulation foretells some of the marketing and other abuses that may also come with electric deregulation in California, as discussed in Chapter 3.

Not only must consumer education begin well in advance to inform customers that restructuring is going to happen and what it will mean to them, but they must also be educated about how to protect themselves from abuses by the unscrupulous. Language minorities, the poor, immigrants and limited-English-speaking will be most susceptible to targeting by potential fly-by-nights and

quick-buck artists abusing the Commission's certification and redress process. In all major slamming and marketing abuse cases prosecuted by the CPUC to date in telecommunications the unscrupulous practices have been focused primarily on limited-English-speaking and minority groups. Many of these victims have been charged rates two or three times higher than those of their previous carrier, and have been billed for calls they never made. These targeted consumer groups must be educated both ahead of time and as restructuring progresses about how to evaluate and/or make informed choices among competing energy providers, what credit information may be sought, where to report suspected abuses, what to do if they are over-billed or slammed, where to go for redress, and what their rights are in terms of a provider of last resort. All information must be multilingual and culturally appropriate, and provision must be made for illiterate customers or those, such as the Hmong, without a written language. In evidence adduced recently before the Commission in the CTS slamming investigation (I.96-02-043), witnesses testified that minority and limited-English-speaking populations are targeted because of their propensity not to complain to authorities and not to know how to exercise their rights.

5.3 The CPUC's Consumer Advocate Role

5.3.1 Access by Consumers to Their Own Usage Records

In order to comparison shop effectively, customers will need to be educated about their own energy consumption patterns and history of usage. It is unreasonable to expect that customers have saved their bills over the previous three years in order to secure this information. The IOUs, however, have collected historical data about their customers that can be used to help educate those customers about their own energy usage history, and its importance to their opportunities. Two approaches were identified by parties.

[1] *IOUs Provide Customized Usage Profiles*. In order to facilitate customer evaluation of options, the IOUs could be directed to provide, upon request, an energy usage profile for an individual customer. Costs to provide this information should either be reimbursed by the customers or through cost recovery mechanisms that encourage IOUs to perform this function proactively. Profiles could include a chart and breakdown of monthly data for energy consumption and price paid for energy over the previous 12-24 months. In order to participate in a meaningful way in consumer choice opportunities, the electric customer needs energy usage history, data from comparable periods of the current and at least one previous year, adjustment for weather fluctuations, adjustment for price changes, comparison to other customers' energy usage and breakdown of expenses for major appliances. (See W. Kempton, *Improving Residential Customer Service Through Better Utility Bills*, ESource SM-95-1, August 1995). The first energy profile could be offered at no cost to customers, paid for through other funding mechanisms. Modest direct customer charges may be applied to subsequent profile requests. This profile will be the basis upon which customers can gauge their historical energy consumption patterns, better assess their energy needs and gain a sense of the cost of that electricity.

[2] *IOUs Provide Raw Data*. IOUs could be directed to provide raw energy consumption and bill data for each billing interval in their active computer databases for a processing fee. Searching back into archived records would be an added cost activity. Analysis to adjust raw data for price changes, weather, or other anomalies would be something performed by the customer, a potential energy service provider, or a third-party firm providing an analytic service.

5.3.2 Price and Quality Comparisons

If a consumer is unable to comparison shop for electricity services, then the market will fail. In order to shop, a customer must be able to determine value. This point is affirmed by the legislature in AB 1890, Sec. 392(b). In order to establish value, the consumer must be able to compare price and quality of competing services. Some believe that competitive markets don't always succeed in providing such information. Long-distance and local-long distance telephone services and the auto insurance industry are examples where industry has failed to properly apprise customers of essential information. In response to this problem, the state's Department of Insurance has a program to assess and publicize comparative rates and customer service records for auto insurers. This agency is also statutorily charged with creating a hot-line service for price comparisons for customers.

Some parties believe that explicit education programs must be developed by the CPUC that would supplement the information provided by the private market. These efforts could include:

- Monthly listing of licensed energy providers;
- Bi-annual listing of price comparisons among energy providers;
- Bi-annual listing of consumer complaint information;
- Annually-revised glossary of energy service terms and description of services;
- Telephonically-accessed listing of service providers whose license has been revoked, suspended or limited and an alert about unlicensed providers; and
- Creation of representative service benchmarks for different types of customers upon which comparisons of service can be readily made.

Some parties believe this information should be made available to all customers at no cost. It can be distributed though CPUC offices, community-based organizations, other state agencies and by all licensed energy providers. Others emphasize the need for this information to be accessible by both English- and non-English-speaking customers.

Other parties believe that it is premature to assert a need for an aggressive and potentially costly shopping service such as the one described above. These parties suggest that either no program or a more market-oriented approach be considered, wherein this information would be provided by retailers or other third parties to those desiring and valuing it at market-based prices. If the Commission decided that market information must be provided, then UDCs or ESPs might also

be used to provide this information, rather than a new organization that would have to be created, staffed and functioning in a short period of time.

5.3.2.1 ALTERNATIVE: CPUC dissemination of market information

The CPUC should collect and disseminate service provider price and service quality information. This alternative assumes use of information about all service providers. A variation could be that the CPUC would limit its efforts to providing information about UDC service offerings, which would give consumers a benchmark against which to compare other offerings. This limited effort would be much simpler than providing information about all service providers, since UDC pricing information would be on file at the CPUC and would not require additional surveys.

Alternative 5.3.2.1 PRO

The CPUC is in a position to provide this function since it is the agency responsible for receiving complaints and compiling complaint data, according to the mandate of AB 1890. Its function can be extended to gathering pricing information from service providers. The information so gathered and compiled can be made available to the public.

Alternative 5.3.2.1 CON

Gathering pricing data will involve considerable CPUC resources that could be better used in its other regulatory functions. Complaint data, alone, may be inadequate as an indicator of service quality. Use of an independent, outside firm, qualified to perform pricing and/or service assessment surveys, would be preferable to CPUC involvement. A problem, however, is that ESPs may be unwilling to release in advance such information as would reveal their marketing strategies and thus place them at a competitive disadvantage. Older price and quality information, which they might be more willing to release, would be less valuable to consumers and would therefore limit the effectiveness of this effort.

5.3.2.2 ALTERNATIVE: Education Trust provides market information

The RESET (Consumer Education Trust) should be required to include the function of price and service quality information gathering and dissemination as an out-sourced outreach mechanism to be duly funded.

This alternative would require the RESET to issue an RFP to select an independent monitoring or survey firm to gather pricing and service quality information on service providers. The information developed would be made public via channels determined appropriate and effective, such as a quarterly or semi-annual published report, available at libraries or on the Internet. The information would be provided on a regular basis as long as the RESET and a public need exist.

Alternative 5.3.2.2 PRO

This alternative draws upon the model supplied by publications such as *Consumer Reports*, which contains relevant and useful product price and quality information for consumers. It would utilize the market, rather than the government directly, to perform the task of gathering market information and advising the public of the results.

The CPUC's complaint data, alone, may be an inadequate indicator of service quality. The gathering of other information, such as customer satisfaction data, would give consumers a more complete picture of the market players. The development of this type of data is best left to survey experts, independent of the market itself. Importantly, the CPUC would conserve limited resources to enable it to perform other priority work.

Alternative 5.3.2.2 CON

The CPUC should have the primary responsibility for assuring that consumers are provided with adequate information to allow them to make informed choices. While involvement by RESET may be useful, it is very important that such involvement not dilute in any way the primary responsibility of the CPUC.

5.3.3 Monitoring Customer Education by Private and Non-Profits

Some believe that the CPUC should go beyond ensuring that price comparison information and evaluative services are provided, and that the CPUC will be obligated to monitor private consumer education by market competitors and non-profits to ensure accuracy of the information. Parties identified four activities that could be taken by the CPUC to improve the quality of consumer information in the market.

[1] *Provide Materials.* The Commission should provide copies of its education materials to CBOs and other state agencies for distribution to clients.

[2] *Provide Training*. As part of its public outreach and dispute resolution functions, the Commission could train individuals in CBOs and assorted social service agencies to handle electric service complaints. These designated individuals would then be familiar with the types of complaints and the remedies available to customers who have problems with the competitive services. Trained individuals could advise the consumer, help mediate a resolution or refer the customer to the CPUC and/or other appropriate entities for resolution of the complaint. This training effort could substantially increase the likelihood that consumers will get assistance. It would also serve as an early warning system for potential systemic problems in the market, and it could reduce the workload on the Commission's Consumer Services Division.

[3] *Review Draft Materials*. The CPUC could also serve in an advisory function for market participants. During the transition period, the CPUC should provide a service whereby it will

review marketing materials voluntarily submitted by service providers to the CPUC. By undergoing an accuracy review by the CPUC, the market providers may be protected against possible private action for misleading or false advertising. The CPUC might in this way be able to proactively prevent potential customer confusion.

[4] *Hold Providers Accountable*. The CPUC must inform providers that they will be held responsible to the extent consistent with law for any fraudulent, deceptive or other unlawful marketing or billing acts performed by their agents and representatives, whether or not they attempt to insulate themselves by classifying such persons as independent agents.

5.3.4 Fostering Aggregation of Small Customers

Small customers may need to rely upon service by aggregators in order to participate in direct access. Absent aggregation, small customers' costs will be linked directly to the performance of the Power Exchange (PX). As demonstrated in insurance, banking and other complex services, aggregation of small customers can reduce transaction costs and increase market leverage. In newly established markets like electric and telecommunication services, it may be essential that such aggregation occur to give small consumers some opportunity to secure improved service and lower costs.

The CPUC is acutely aware of the problems faced by traditionally under-served communities. It has studied and is aware of low-income, senior, rural, ethnic minority, inner-city and other readily identifiable subgroups that have not been adequately served in telecommunications reforms. It is uniquely qualified to help identify these communities to aggregators by improving information and communication among potential customers. Some parties believe this task cannot be left exclusively to the private market because they assess other market results as inadequate. There are at least two alternative views about how far fostering aggregation should go.

[1] *Educate Consumers.* During the five-to-ten-year transition period, the CPUC should be active in helping promote aggregation by properly educating customers. While the Commission should not directly assist energy providers, it can serve as a coordinator for private companies to find customers. For example, it can direct the distribution of information to the state's customers about available aggregators in rural, inner city and other under-served communities. It can establish a hot-line where interested consumers can learn of the potential aggregators.

[2] *Actively Facilitate Aggregation*. Some parties believe that the CPUC can be even more active and work with the private market to aggressively promote customer aggregation. It can assist municipalities and other public agencies that seek to create legal aggregators of electric or phone services. It can list the aggregators' names and product information on the CPUC Web Site and make the information available at CPUC offices.

5.4 Restructured Electric Service Education Trust (RESET)

The Commission has set the stage for development and implementation of an Education Trust as an important element to facilitate the success of its program to restructure the electric industry. Before developing a framework for a consumer education trust for electric service, let us look at two other trusts with educational aims, namely the Telecommunications Education Trust (TET) and the Deaf Equipment Acquisition Fund (DEAF) Trust. Some parties advocate a structure similar to the TET fund, with independent administration and allocation of funds to community organizations and others who are familiar with community-specific needs and specific fraudulent activities in various communities, and who have the confidence of their communities.

Section 5.5 of this report provides an example charter for the Trust. It is not endorsed by DAWG, but is included for the purpose of eliciting comment. This charter takes the form of a legal document that embodies some of the approaches described in the remainder of this section.

5.4.1 Telecommunications Education Trust (TET)

On December 22, 1987, the Commission issued D.87-12-067 which ordered Pacific Bell (Pacific) to create a trust fund called the Telecommunications Education Trust (TET). The TET was one of the programs the Commission ordered Pacific to establish to make restitution to ratepayers for abusive marketing tactics employed by the telephone company in selling certain telephone services. TET's objective was to further educational efforts and increase ratepayer understanding of the telecommunications system. Pacific's funding for TET was set by the Commission at $16.5 million. The money was to be disbursed annually over a period of six years ($3 million per year for five years; the remainder in the sixth year) to various community and consumer oriented groups and other organizations to implement certain outreach and educational projects. TET funds were to be administered by a trustee; in this case, the trust department of a bank. A disbursement committee composed of DRA, Pacific, two consumer groups and the Public Advisor would meet annually to review applications for funds and decide which projects were to be funded.

5.4.2 The Deaf Equipment Acquisition Fund (DEAF) Trust

The second trust fund, the Deaf Equipment Acquisition Fund (DEAF) Trust, existed in various forms since the early 1980s when state legislation mandated a fund be established to provide special equipment and communication services to deaf, hearing impaired and disabled individuals. Funds were collected by placing a surcharge on intrastate telephone calls. In 1989, in response to complaints from various groups in the deaf and disabled communities, the Commission issued

D.89-05-060 (May 30, 1989). This decision completely reorganized the administrative structure of the DEAF Trust.

Prior to this decision, under the jurisdiction of the Commission, Pacific administered the DEAF Trust and performed its day-to-day activities. The decision created one administrative committee and two subcommittees, and ordered the administrative committee to open and staff a DEAF Trust office to handle day-to-day operations. Each committee had representatives from the various constituent consumer groups, as well as personnel from the telephone utilities (including the communications services provider) and Commission staff. The 1996 Budget for the DEAF Trust was approximately $44 million.

5.4.3 Comparison of the TET and DEAF Trusts

The differences between the two trust funds are summarized below.

[1] The TET was established to benefit all users of telecommunications services; the DEAF Trust was established to benefit only certain segments of the community.

[2] The TET was funded as a result of a penalty levied on a utility by the Commission; the DEAF Trust was funded by a surcharge.

[3] The TET was a temporary trust; the DEAF Trust is a Federally-mandated permanent fund.

[4] The TET was established as a disbursement vehicle for restitution funds; the DEAF Trust is an activity subsidized by customers.

[5] Each TET Committee member had one vote; on the DEAF Trust subcommittees, certain parties were standing members only and were not permitted to vote.

5.4.4 Restructured Electric Service Education Trust (RESET)

The following three subsections provide an initial proposal for a RESET. It is not necessarily constrained by current CPUC authority, since changes in statute may be required to establish other facets of retail restructuring. This is not a consensus proposal. Although there are alternatives presented on certain elements, no other overall proposal was presented by the working group participants.

5.4.4.1 Scope

RESET is to be established to promote consumer education and understanding of forthcoming changes in the structure of the electric industry in California and to educate consumers about service options available to them in the newly competitive electric environment. Among other things, such efforts could include: mass media programs, educational forums and community outreach efforts, all paid for by giving trust funds to selected groups. All funds disbursed must be used strictly for education purposes, not for advocacy by any group. Special efforts should be made to target certain groups such as the elderly, low income and non-English speaking communities. Experience in the restructuring of the telecommunications industry indicates these groups are targeted by unscrupulous companies and subjected to various forms of marketing abuse such as slamming and redlining.

Timing is a major issue, with respect to both funding and instructional efforts. Consumers must be educated ***before*** the market is declared competitive, as well as during the transition and afterward. In order that direct access can be implemented, a major responsibility of the education trust will be to ensure that customers are able to make informed choices in the market. For this to happen, massive and general education efforts must begin at least six months prior to implementation of direct access, i.e., ***no later than July 1, 1997***. Obviously, the trust must be established well ahead of that date. If legislation is required to create the trust, the Commission should make the appropriate overtures to the Legislature now to make it happen.

5.4.4.2 Funding

No detailed estimates have yet been made of the potential price tag that will be required to equip consumers to participate in a restructured industry. The recent Caller Notification Education Program (CNEP) carried out by Pacific Bell to educate its customers about Caller ID service cost approximately $32 million. That program was limited in its content and was a one-time-only effort. The effort for electric restructuring will need to be more extensive, and last several years at least. Therefore, one might suspect that expenditures for consumer education on electric restructuring might exceed those of CNEP. However, it is not likely that all education efforts will be conducted and funded via the trust. Therefore, funding of the trust could be less costly than CNEP.

Funding should come from those companies who have a vested interest in doing business in California in the newly deregulated energy market. A budget for outreach and education could be agreed upon, as well as a fair and reasonable method of assessing industry participants. In addition, an education fund of this nature could be fed by fines or penalties levied by the Commission on service providers who violate the Commission's rules. Finally, seed money for the trust could come from direct access transition funding similar to that proposed for utility-sponsored education activities.

Potential sources of funds for the education trust that have been discussed by the DAWG members include the following:

- Utility funding, diverting funds already earmarked for marketing and education;
- Utility funding, with expenses tracked via a memorandum account to be settled later;
- Utility funding, recovered in distribution rates or as part of the Public Goods Charge;
- Registration fees or a kWh-based fee charged to service providers;
- Fines and penalties levied on market participants; or
- Private funding from advertisements included in educational materials.

Three alternative short-term funding views are as follows:

[1] *Divert authorized utility marketing/education funds*. A short-term funding mechanism might be to divert general rate case funding for marketing and education programs, such as DSM programs, to the trust.

Alternative [1] PRO

Consumers should not be required to pay for a program to educate them when the matter of whether or not the industry was to be restructured was beyond their control. At the outset, existing IOUs would be adequately reimbursed through regulatory mechanisms before being required to provide funding. Using funds already allocated to marketing and education programs in past GRCs would reduce potential new outlays of funds for restructuring education. Such funding is already included in rates, so customers would pay, but they would not pay more. Whether this is permissible under CPUC ratemaking practices is unclear.

Alternative [1] CON

Given the public policy support for DSM activities, as well as interpretations of specific funding criteria in recently-enacted AB 1890, this does not appear to be a viable approach. For example, if one of the purposes of direct access is to create a more efficient market, one in which customers receive price signals reflecting actual costs of service, it is no different from the DSM-funded implementation of residential time-of-use pilot programs giving customers better control over how and when to use energy.

[2] *Provide new utility funding recovered through a trust*. The assertion that consumers should not be required to pay for a program to educate them is simply a smoke-and-mirrors statement. If retailers pay for education, they will just pass the costs on to consumers. Once we recognize that consumers will eventually pay the bill, the question is how to recover the money in the most efficient and equitable means possible. Utilities should not be required to fund significant educational efforts without appropriate compensation. Perhaps this could simply be another of the costs of a retail restructuring implementation trust that parallels that now being established for ISO/PX costs.

[3] *Sell advertising space in educational materials.* This approach can be both a short-term and long-term funding mechanism, whereby electric service providers (or related business enterprises) would buy advertising space (printed or electronic) or time (audio or video) in educational materials given to the public. The cost of the RESET's education effort would be borne, at least in part, by interested service providers, not by direct assessments on the utilities.

Longer-term funding possibilities are:

[4] *Impose fees on retailers as part of the registration process.* This approach imposes education costs solely on direct access participants. It avoids some of the problems with recovering charges within utility rates, and will be seen as equitable by some. However, it may also be seen as a barrier to competitive entry, since it is a fee that utility default service customers would not pay. Also, the CPUC's legal right to impose registration or kWh fees could be challenged, unless there are legislative changes.

[5] *Use fines imposed on market participants for abusive practices.* This approach is clearly a viable means of funding the trust. Unfortunately, such a source of funding is uncertain, and will certainly not be available in time to fund education programs prior to 1/1/98.

[6] *Sell advertising space in printed educational material.* Electric service providers (or related enterprises) wishing to advertise in space made available in printed or perhaps video educational media would pay for such advertising. Primarily a long-term funding mechanism, this approach could defray, perhaps to a large degree, the costs of disseminating educational messages.

Although all funding source alternatives present some problems, it is the hope of the DAWG that comments to be submitted on this report will help to refine the alternatives presented here and perhaps introduce others for the Commission's consideration.

5.4.4.3 Administration

RESET should be administered by a committee modeled after the committee that administered TET. Committee members could consist of Commission staff (including the Public Advisor and outreach officers), industry participants and various consumer groups. Committee members should be approved by the Commission and each member should have one vote. A trustee for the actual funds would need to be retained, as well as the services of an attorney. Fees for these services and committee operating expenditures should be approved by the Commission. (This includes expenses for consumer members, which should be subject to the same rules as those applicable to Commission staff.) The Committee should be responsible for reviewing various requests for proposals (RFPs) or grants submitted to it. An outside party (someone not on the committee) should be made available to assist parties with the writing of requests and grants. In other words, no group or individual should be automatically excluded from the process due to their inexperience in grant or request writing.

There are three disputed views about the criteria for membership on the administrative committee. The composition of the RESET Committee might vary from that shown in the Membership section of the sample charter in Section 5.5, depending on the criteria selected.

[1] *Exclude Participants in CPUC Proceedings*. Criteria should be established for consumer members similar to the criteria established for consumer members of the TET Disbursements Committee: (1) consumer members must have prior experience with mass consumer education programs; (2) consumer members must not have appeared before the Commission in formal proceedings, and (3) if consumer members are active in a consumer group, that group must be willing to forego competing for any monies the committee may grant or disburse.

[2] *Select Capable Persons Irrespective of Their Other CPUC Activities*. Some parties disagree that appearances before the CPUC or involvement in CPUC proceedings should disqualify a person from serving on the administrative committee. This would exclude some of the most knowledgeable and capable organizations concerning impacts and implications of electricity restructuring from participation. These are also the same groups with the trust and confidence of minority organizations. There is precedent for parties to the proceedings which led to the TET fund to receive monies for community education purposes.

[3] *Select Any Capable Persons, but Limit Voting Rights.* This alternative recognizes inherent advantages of including the most knowledgeable parties, but would prohibit any member from voting on a project for which that member's organization is eligible to receive funds. This alternative would eliminate the appearance or effect of conflict of interest.

5.4.5 Monitoring and Evaluation of Trust Performance

The CPUC would monitor and evaluate the performance of RESET's administrative committee. To help accomplish this, the CPUC would require the RESET Committee to submit periodic reports on the activities of the trust. In addition, the CPUC would exercise control over some RESET administrative actions.

[1] *Periodic Reporting*. The Trust committee would periodically report to the CPUC on the following items:

- Amounts of money disbursed.
- Names/Identities of fund recipients.
- Purpose of programs funded.
- Summaries of educational efforts, including: (1) Description of what was done; (2) Who the target groups were; (3) What the impacts of the efforts were (number of people contacted; what the response was, if appropriate).
- Account balances.

[2] *CPUC Control Over Certain Changes.* A Commission resolution should be required for the trust committee to do the following:

- Change the identity of the financial advisor or trustee.
- Change either the committee structure or its membership.
- Change the terms and conditions of the trust.
- Obtain approval for an operating budget.

5.4.6 Concerns with a Trust Approach

Experience with other trust funds has shown that certain problems have arisen with the trust fund process. These problems are primarily in the area of definition of roles of the members and conflict of interest. Some parties believe that the RESET fund can be established in such a way as to avoid problem areas by implementing measures such as those listed below.

· Voting Rights. Each member of the committee should have one vote. No member may vote on disbursement of funds it may receive. If a vote is tied, the Public Advisor should cast a tie-breaking vote.

· Either experts should be hired to conduct a consumer outreach program, or the groups given funds should have extensive experience in this area.

· Before any outreach education programs are conducted, ways of effectively monitoring efforts and measuring outreach results should be agreed upon by the committee.

· The roles of committee members, the committee itself and the Commission should be distinctly defined.

· Conflict of interest rules need to be explicitly defined and understood by everyone.

· A "sunset" clause needs to be included in the terms and conditions of the trust.

5.5 Example Charter for the RESET

The Restructured Electric Service Education Trust (RESET) Committee will develop a charter detailing the purpose, structure, duties and conduct of RESET. An example of such a charter is provided in the remainder of this section.

EXAMPLE CHARTER FOR THE RESTRUCTURED ELECTRIC SERVICE EDUCATION TRUST

I. NAME

The name of the committee shall be the Electric Consumer Education Trust Committee (referred to hereafter as "RESET" Committee).

II. PURPOSE

The RESET Committee's general purpose is Consumer Education mandated by _____ (Section xxxx of the Public Utilities Code, or other authority), for providing education for consumers concerning the restructuring of the provision of electricity services in California.

III. MEMBERSHIP

A. Members. The RESET Committee shall be comprised of nine (9) members as follows:

1. Members shall include:

(a) Service Provider members -
(b) Consumer Members -

2. Member(s) — Shall be two from the California Public Utilities Commission (CPUC), one each from San Diego Gas & Electric Co., Pacific Gas & Electric Co. and Southern California Edison, two from established consumer groups and two from electric service retailers in competition with established utilities.

B. Selection of Members. Initial selection shall be determined by the Commission. Thereafter, potential members of the RESET Committee shall be nominated by the organizations or constituencies they are to represent. The members of the RESET Committee shall be recommended for approval by the Commission's Executive Director, according to procedures preferred by the Commission.

C. Qualifications of Members. The qualifications of members shall be established by the RESET Committee in conjunction with the CPUC. In general, members shall have professional or technical expertise sufficient to enable them to be conversant with the responsibilities of RESET. Consumer members should be able to demonstrate organizational or other ties to the constituency they are representing, and in addition, they should not be employed by or represent the interests of any vendors or distributors who are providing or who may in the future provide equipment or services related to consumption of electricity, consistent with the Disclosure and Conflict of Interest Policy attached to this charter. (To be developed and attached.)

D. Term of Appointments. The terms of the members of RESET Committee shall be staggered, with one-third of the membership appointed each year. Initial appointments shall be for terms of one, two or three years; thereafter members will be appointed for three-year terms. A member may be re-appointed, but no member shall serve for more than two consecutive full terms.

E. Removal from Membership.

1. Membership may be terminated through resignation.
2. Members who fail to attend three consecutive meetings without just cause or proxy may be subject to removal from committee.
3. Any member of RESET Committee, on the recommendation of two-thirds of the RESET Committee, may be removed by the Commission's Executive Director for cause shown, in procedures preferred by the Commission.

F. Vacancies. Vacancies on the RESET Committee shall be filled from nominations submitted by the organization or constituency whose vacancy is being filled. The membership of persons filling a vacancy shall be selected and approved by the Commission's Executive Director using procedures preferred by the Commission. Vacancies for expired terms will be filled by full-term appointments; vacancies for unexpired terms will be filled for the remainder of the term.

G. Expenses. Consistent with Commission Resolution ___, consumer members of RESET Committee shall be entitled to appropriate reimbursement of expenses they incur in connection with their services on the RESET Committee. Expenses will be reimbursed in accordance with the Commission's travel expense claim rules applicable to its own employees. Utility members and other service providers are not eligible for expense reimbursement.

IV. DUTIES AND RESPONSIBILITIES

The RESET Committee shall have the following duties and responsibilities:

A. (To be specified.)

B. Provide representation on any specially created Task Force.

C. Perform other functions and duties as may be directed by the CPUC.

V. MEETINGS

A. Regular Meetings. The RESET Committee shall hold such meetings as it shall decide are necessary or appropriate in order to carry out its functions. The succeeding meeting, place, time and location shall be scheduled at the preceding meeting. All meetings shall be open to the public, shall be noticed, shall be conducted pursuant to Robert's Rules of Order, 199x Edition, and shall be otherwise held in accordance with the provisions of Government Code Sections 11120 ff.

B. Special Meetings of the Committee. Special meetings of the RESET Committee may be called by the Chair or by a quorum. All RESET Committee members are to be notified at least three days prior to the special meeting.

Such notices shall:

1. Set forth the date, time and location of such meeting.
2. State the business to be conducted at such meeting.

C. Public Participation. All meetings will be open to the public. Each meeting shall have a specific portion of the meeting agenda devoted to the presentation of questions, comments, and suggestions from any non-member of RESET present on accordance with Government Code Sections 11120 ff. Members from the public and observers shall not be permitted to take part in any meeting unless recognized by the Chair. The RESET may limit time for public participation, depending on the number of participants and the content of the overall agenda.

D. Quorum. Three or four authorized members or their designated representatives (depending on whether the total number of members is five, six or seven) shall be necessary to constitute a quorum for performing RESET Committee functions. No action shall be taken unless a quorum is present. A majority of the members present at a meeting, whether or not a quorum is present, may adjourn the meeting to another time or place. Any adjourned meeting shall be subject to the same notice requirements as a regular meeting.

E. Proxies. A member may be represented at any meeting by oral or written authorization by that member to the chair naming a designated individual to represent the member at a specified, noticed meeting. Any proxy may be revoked at any time before the meeting begins by oral or written notice to the chair by the member who gave the proxy.

F. Motions. Any member may submit motions from the floor for RESET vote.

G. Agenda. Each notice of meeting shall be accompanied by an agenda setting forth the matters that are expected to be presented at the meeting. Each agenda shall include allotted time for public input. Except in an emergency and with the approval of a majority of the members present, RESET Committee shall not consider at any meeting an item not on the agenda.

H. Participation. Members of the public and observers shall not be permitted to take part in any meeting unless recognized by the chair.

VI. OFFICERS

A. Two Officers. The RESET Committee shall have a Chairperson and a Vice Chairperson, both of whom shall be elected by a majority of the members to serve for one year from date of election and may be re-elected.

B. Duties. The Chairperson shall be the executive officer of the RESET Committee and subject to the control of the RESET Committee and this Charter, have the general supervision and direction of the affairs of the RESET Committee. The Chairperson shall preside at all general and special meetings of RESET Committee, set the agenda for place and time of meetings, appoint Task Forces as needed, and submit proposals and recommendations to the CPUC. In the event of a vacancy of the office of Chairperson, the vacancy shall be filled by a majority vote of the members of RESET Committee. The Chairperson so appointed shall serve out the term of the vacancy that has been filled.

The Vice Chairperson shall perform the duties of the Chairperson when the Chairperson is unavailable.

VII. AMENDMENTS

The RESET Committee may recommend that the Charter be amended at a regular meeting by a vote of a majority of its voting members. Any proposed amendment must have either been proposed at a previous meeting or have been received by RESET Committee members at least ten days in advance. Any revisions shall not become effective until approved by the CPUC.

VIII. INDEMNIFICATION

Members of the Committee, who are not members of the Commission staff, are uncompensated servants of the Commission and the State of California within the meaning of Section 810.2 of the Government Code. The State will accordingly indemnify them as it indemnifies its compensated employees, and will provide them representation by the California Attorney General, for their acts done within the course and scope of the services they perform for the Committee, as provided in Government Code Sections 825 et seq. and Sections 995 et. seq.

IN WITNESS WHEREOF, we the undersigned members of the Electric Consumer Education Trust Committee do hereby constitute, establish, and adopt this as the charter for said committee effective as of the day, month, and year first written.

Chapter 6. Access to Customer Information

The DAWG parties agreed to leave this material as it was presented in the August 30 DAWG Report, Chapter 7. Since the release of that report, there have been no further discussions in the DAWG process on this subject. Moreover, AB 1890 is silent on this subject and thus offers no guidance to the Commission about how to resolve the various issues raised in the earlier Report. For these reasons, and in the interest of efficiency, Chapter 7 of the August 30 DAWG Report is not reproduced here.

Chapter 7. Implementation

7.1 Implementation Objectives

First and foremost, there is general agreement as to the importance of developing procedures for registering electricity service providers and developing a program to educate consumers, prior to the commencement of direct access on January 1, 1998. Failure to achieve these objectives risks customer confusion, poor market information, inadequate choices for some consumer groups, and political backlash resulting from an undeveloped and poorly performing competitive market.

In addition, AB 1890 has identified some additional tasks that must be incorporated into an implementation plan for consumer protection and education. To be specific, these new tasks are:
[1] design and implementation of the formal notification that providers must furnish to prospective customers (see Sec. 394(b));
[2] design of a mechanism for cancellation of a contract by customers (see Sec. 395);
[3] creation of standards for safety and reliability of distribution systems, including restoration of service after outages (see Sec. 364);
[4] determination of the process for exempting renewable-energy customers from phase-in of direct access (see Sec. 366(b));
[5] creation of operating rules for the entity or entities to perform third-party verification of customer changes of service provider (see Sec. 366 (d,e)); and
[6] education of existing and potential cogeneration consumers about opportunities to benefit from CTC relief (see Sec. 372).

These new tasks affect the implementation of consumer protection and education in a twofold manner. First, they increase the scope of activities that must be conducted during 1997, and second, they affect the content of the consumer education effort by adding new elements about which consumers must be educated.

This chapter proposes implementation timelines and recommends actions that some of the DAWG members believe the CPUC should take now in order to implement an effective program of consumer protection and education. We propose two "critical path" chains of events, one leading to CPUC registration of electricity service providers, the other leading to adoption and implementation of a Consumer Education Plan. Time is clearly of the essence, as a review of our proposed timelines will show. Already, time constraints are acting to limit our opportunity to pursue more deliberative efforts. For instance, Section 11.2 of the August 30, 1996 DAWG Report identified a number of different entities in whom responsibility for Consumer Education Plan development could be vested. Whatever the merits of these different options, AB 1890 made it clear that the state's "electric corporations" — most notably the existing utilities — will take the lead to develop and implement, subject to Commission approval, Consumer Education Plans in the time available.

Obviously, the implementation schedules adopted for consumer protection and education issues need to dovetail with the Commission's other restructuring and direct access implementation efforts.

Many of the DAWG members agree with the importance of developing a Consumer Education Trust, which would serve as a source of funding for community-based and other targeted educational outreach programs. In Chapter 5, various structural and funding approaches are described. In light of more pressing needs, we have not developed specific implementation proposals, and do not plan to make a further submission to the CPUC on this subject on December 6, 1996. Finding a reasonable source of funding for the trust is a problem, due to the rate freeze enacted in recent legislation, and a general concern with high electricity rates. We request the Commission's guidance with regard to funding sources.

In addition to registration and education efforts, the Direct Access Working Group envisions the CPUC taking an affirmative role in developing redress, oversight and monitoring procedures (Chapter 4 of this report) and becoming a reliable, neutral source for information about electricity service providers (Chapter 5). Because these are internal CPUC functions, we have not provided specific implementation recommendations. Nevertheless, we are concerned that the CPUC move expeditiously in these areas. Our members welcome any opportunity to comment or assist in these CPUC efforts.

7.2 Legislative Issues and AB 1890

This report has been drafted to reflect the beliefs of the DAWG members about the necessary elements of effective programs to insure adequate consumer protection and education. In developing our recommendations, we made no attempt to limit ourselves based on what is permissible under existing law, or what is achievable through legislative changes.

Recently enacted legislation, AB 1890, explicitly imposes on the CPUC a requirement to register electricity service providers and specifies information to be compiled from such providers. The DAWG members are not prepared to express opinions as to whether this legislation restricts the CPUC's ability to impose requirements on electricity service providers, such as bonding, or allows the CPUC to reject or suspend a registrant. In general, most of us believe the CPUC should have such authority. As soon as possible, the CPUC should conduct a review of its statutory responsibilities and authorities in light of AB 1890's registration requirements, and determine whether it will require additional consumer protection legislation to carry out its responsibilities. Such clarity is essential to move forward with the registration timeline presented in the following section.

AB 1890 imposes the implementation of consumer education program on electric companies, subject to approval by the CPUC. The discussion of a utility-initiated Consumer Education Plan contained in Chapter 5 comports with this legislative requirement.

Finally, AB 1890 recognizes that restructuring imposes certain implementation costs on utilities, which at the same time imposing a rate freeze (Section 368(a)). Section 376 provides a procedure for utilities to defer recovery of implementation costs until after 2001. The DAWG members recognize the practical necessity of allowing utilities to recover their costs associated with the Consumer Education Plan described in Chapter 5. Thus, the CPUC should allow utilities to make a funding request, and should act expeditiously on this request.

7.3 Implementation Timelines

7.3.1 General Framework

A recent Commissioners' Ruling adopted a schedule for comments on this report. Comments are due on November 26, 1996, and replies are due on December 11, 1996. As a result we do not anticipate further action by the CPUC on Consumer Protection and Education issues until the end of 1996, once comments and replies have been received, so the timelines presented below effectively start at the beginning of 1997.

Technical requirements imposed on metering and communication systems by the ISO settlements process, and Commission decisions regarding the nature and timing in which any phase-in of direct access will take place, will affect when in 1997 customers must begin to make their direct access elections. One outcome could be that the ISO will require a daily flow of metered usage information be communicated "upstream" so that accounts can be settled each day and so that schedule coordinators are aware of the discrepancies between their forecast and actual loads as soon as possible. If this is the case, most existing customer metering, even for the largest customers, would need to be replaced or augmented with communication devices prior to the commencement of direct access. At least 60 days should be allowed to procure, install and test the necessary metering and communication devices. A longer time period for metering and communication device installation may be needed if load profiling is not utilized for residential customers.

If the Commission adopts a phase-in schedule that limits direct access availability during 1998, so that there are more customers seeking direct access eligibility than can be accommodated, there may be a need for some form of open season where customers can choose whether to participate in the initial phase of direct access. The schedule should allow adequate time for this open season, if it occurs. If 30 days are allowed for the open season, and 60 days for metering and communication implementation, then registration and initial consumer education efforts should be completed no later than September 30, 1997. We cannot be certain that this target date is

sufficient, or that a later date would be infeasible. However, this date provides a basis for beginning to plan for and schedule needed registration and education implementation activities.

Based on the above, the schedules set forth below show that there are about nine months to complete the registration and education processes, from the end of the comment period on this report until the beginning of an open season on October 1, 1997. The next two subsections present specific timelines for registration and education consistent with this assumption. The final subsection discusses alternatives that take into consideration delays in the schedule.

7.3.2 Registration

At the outset, the Commission must determine whether or not a proceeding is needed to develop registration requirements. Some parties have asserted that AB 1890 is dispositive of many issues regarding registration of electric service providers (ESPs), so that little additional effort by the Commission is required. In this case, the registration process becomes a simple matter of collecting the information required by the statute.

Other parties assert that the Commission should establish a more comprehensive registration program than what is provided by AB 1890. If the Commission chooses to do so, it will need to determine whether AB 1890 constrains its authority in this area, and if so, it will need to seek new legislation that provides for greater Commission authority. In this case, there are a variety of alternative approaches to initiate the process of developing registration requirements and implementing electricity service provider registration. Some options and approaches for electricity service provider registration are described in Chapter 4. This section describes the advantages and disadvantages of three approaches: (1) developing registration requirements in an Order Instituting Rulemaking (OIR) or an Order Instituting Investigation (OII), (2) initiating a proceeding on registration requirements by requiring Southern California Edison, Pacific Gas and Electric, and San Diego Gas and Electric to file proposals, and (3) directing further working group efforts to seek consensus proposals, after the Commission provides further guidance on certain issues.

7.3.2.1 ALTERNATIVE: An OIR/OII to determine registration requirements

Alternative 7.3.2.1 PRO: This is a familiar way to resolve policy issues.

Alternative 7.3.2.1 CON: This process is complicated, expensive and takes a long time.

7.3.2.2 ALTERNATIVE: CPUC requires IOUs to file proposals

Alternative 7.3.2.2 PRO: Shifts responsibility for initial effort to the electric utilities.

Alternative 7.3.2.2 CON

1. Allows little or no stakeholder participation.
2. Expertise of IOUs in this area is not sufficient to outweigh benefits of broad representation of viewpoints.
3. There is no necessary reason why the utilities should be the applicants.

7.3.2.3 ALTERNATIVE: A stakeholder working group to develop proposals

This alternative requires that the CPUC promptly resolve certain key issues identified in the August 30 DAWG Report, the two sets of comments on that report and the October 10 Hearing. Once the working group process begins, the CPUC may need to respond quickly to make any further decisions required to resolve barriers to consensus.

Alternative 7.3.2.3 PRO

1. Can result in solution in which all interested parties are meaningfully represented, leading to greater fairness, fewer incentive or enforcement problems and greater societal efficiency.

2. The DAWG process should not be seen as lacking because it identified, described and offered a range of alternative solutions for many large problems but did not achieve consensus on any of them. The DAWG process achieved its mission, which did not include trying to achieve consensus on any issues. Moreover, DAWG did achieve consensus quite easily on selection of coordinating committee, subgroup leaders and editing team.

3. What is needed now is a stakeholder working group given a well defined task, a mission to achieve a workable consensus within a set period of time, and a process that enables meaningful representation by all affected parties.

4. DAWG parties could select members of such a group, having done this before as noted in PRO Point 1 above, and find ways to reduce the resource burdens on these "representatives."

Alternative 7.3.2.3 CON

1. Some stakeholders are stretched for resources after DAWG and other working groups, and they may find it difficult to participate in such an effort.

2. There is no assurance that a stakeholder process will be successful. Given the substantially divergent interests of likely participants, the changes for success are small.

Table 7-1 below sets out an illustrative schedule for developing registration requirements and for registering ESPs prior to the commencement of direct access, consistent with the alternatives

above. This schedule assumes that developing registration requirements will be a controversial process requiring a final CPUC decision. If this is not the case, or if the Commission's receipt of registration applications becomes a ministerial action, then this schedule is largely moot and the registration process can be considerably shortened. The schedule envisions a process in which ESP applicants will be registered *en masse* if they meet certain application deadlines, but late applications will be processed individually and may not receive approval by 9/30/97.

Table 7-1. Illustrative Registration Timeline

Date	Activity
1997: 1/31	OIR/OII Issued or Utility Proposals Filed or Workshops Commence
3/7	Prehearing Conference or Workshop Report
3/14	Initial Comments on OIR/OII or Workshop Report or CPUC Staff and Intervenor Testimony
3/21	Reply Comments on OIR/OII or Workshop Report or Concurrent Rebuttal Testimony
3/31	Hearings (If Required)
5/30	CPUC Decision
8/1	Registration Applications Due
9/1	Protests to Registration Applications Due
9/30	CPUC Decision Approving Registrants Applications
10/1	Open Season Commences

The above timeline does not provide for any gap between approval of registration applications and the start of the open season. This could be a burden on some applicants. However, it is likely that virtually all applicants will be approved (although some may be required to cure defects in their original applications), so that the applicants are likely to begin advertising and other business activities while their applications are pending. In any case, applicants will know whether any party has protested their applications 30 days before the start of the open season.

7.3.3 Consumer Education

The two tables below set out alternative schedules for developing and implementing a Consumer Education Plan (CEP) as described in Chapter 5. Both schedules assume that the CEP can be developed by the CEP Group in a largely consensus-based process without a requirement for formal evidentiary hearings. The DAWG members expect that the CPUC would be able to issue

a decision on the CEP Group's consumer education application after reviewing issues addressed in protests to the application, should any parties choose to file a protest.

The first schedule, shown in Table 7-2, envisions that the CEP Group would jointly file an application for development of a CEP. The application should describe the process of consultant selection, should include a preliminary scope of consultant services, should describe the procedures to insure stakeholder involvement, and should request a specific funding mechanism consistent with P.U. Code 376. A subgroup of utility communication experts has already begun preliminary meetings, at the request of the DAWG members, as reported in Chapter 5. The CPUC should encourage municipal utilities to participate in this joint application and in the development of the CEP. Without such coordination, mass media advertising (print ads, radio, and, if necessary, television) may create confusion, since they will necessarily reach customers of investor-owned utilities and municipal utilities alike.

Table 7-2. Proposed CEP Timeline #1

Date	Activity
1997: 2/7	The CEP Group Jointly Files Consumer Education Application and Funding Request
3/10	Protests Due
3/31	CPUC Decision
5/30	Vendor Selected
8/1	Consumer Education Plan Completed
8/1	Education Efforts Begin
10/1	Open Season Commences

The second schedule, shown in Table 7-3, assumes that the utilities constituting the CEP Group would be prepared and willing to proceed with significant aspects of the CEP without further direction from the Commission. The key element of this proposal that differs from the first, is that utility work begins in 1996 with a vendor selected by the end of 1996. Thus, the CEP Group would file an application almost immediately after reply comments are filed in response to this DAWG report. Also, the actual vendor-constructed CEP must be presented to the Commission for approval and revisions, as per stakeholder input. The time for these two processes requires utilities to submit the application prior to a Commission ruling on the DAWG Consumer Protection and Education report.

Table 7-3. Proposed CEP Timeline #2

Date	Activity

1996: 12/15	CEP Group Files Consumer Education Application, Vendor Recommendation and Funding Request, in anticipation of CPUC decision on DAWG report.
1997: 1/15	Protests Due
3/1	CPUC Decision
3/15	Vendor Retained and Education Plan Process Begins
5/1	Education Plan submitted to CPUC
6/1	Comments on Plan by Stakeholders due
7/15	Commission Ruling on the Plan and Education Efforts Begin
10/1	Open Season Commences

7.3.4 Accommodating Delay

The timelines shown above are very compressed, and do not permit any slippage should delays be encountered. Some parties believe, however, that modifications to the schedule of direct access could occur and still allow direct access to commence on January 1, 1998, in case there is a delay in the schedule for registration and education activities. Of course, if the ISO does not require daily reporting of metered usage information, existing metering would be sufficient to accommodate large customers, and it may be possible to shorten the 60 day period for meter and communication infrastructure installation now reflected in the schedules.

Gradually Phase-In Direct Access During the First Quarter of 1998. If the open season is conducted in December 1997, metering infrastructure would be installed during the first 60 days of 1998. Thus, while some customers would have direct access on day one, others would be backlogged for a period of time while infrastructure is installed. As a result, it would be possible to accommodate a several months delay in both the registration and education timelines.

Different Phase-In Schedule For Residential Customers. In comments on the August 30, 1996 DAWG Report, Southern California Edison, Pacific Gas and Electric and San Diego Gas and Electric companies all supported use of load profiles for residential customers. At some risk of consumer confusion, it may be possible to have an October 1997 open season for business customers and a December 1997 open season for residential customers. (Some believe there will be limited residential interest in direct access. If this is the case, over subscription of the residential portion of the first year phase-in limits may not occur, and there may not need to be any allocation procedures.) This would allow the education program timeline to be delayed several months. If the Commission is willing to allow electricity service providers to offer services to business customers provisionally, i.e., while their application is pending, this would also allow the registration program timeline to be delayed several months.

7.3.5 A Sense of Urgency

Some DAWG participants are concerned with the potential for schedules slipping, causing a delay in direct access implementation. These parties recommend that the Commission consider a "minimum effort" education and registration plan that would be implemented by default, should the CEP implementation not proceed on schedule for any reason. The minimum effort plan could be implemented as either a substitute or a supplement for the CEP. It is therefore recommended by some parties that the Commission request, in the initial CEP Group filings, a "minimum effort plan" along with utility-suggested implementation procedures.

Many DAWG participants expressed concerns over introducing in this report a proposed 1997 funding amount for consumer education. Some asserted that until the CEP is developed, the appropriate funding level will not be known. Others believed that the schedules proposed in Tables 7-2 and 7-3 adequately allow the Commission to make timely implementation funding decisions. There are some important details to note in these schedules, however.

First, the schedule of Table 7-2 addresses only a single funding application on February 7, 1997, to establish funding to develop the CEP. There is no application for funding to implement the CEP. Quite the contrary, as soon as the CEP is prepared it begins to be implemented. Omitted from the schedule is a process for the Commission to (1) authorize CEP implementation funding as a restructuring transition cost, for collection per Section 376 of the PU Code, and (2) require that the CEP be implemented by each utility under the CEP-proposed schedule. Unless those two items are addressed, the implementation of the CEP may not be coordinated at a state-wide level across all three IOU service territories. Without timely implementation of state-wide education, the Commission's targeted January 1, 1998 date for implementing direct access could be in jeopardy.

Table 7-3 addresses the implementation funding application issue, but does not schedule a CPUC decision on that application until July 15, 1997. Although Table 7-3 indicates that education would start immediately upon CPUC approval, some parties assert that it would be another 30 days before education could start, which would endanger the 1/1/98 target. For this reason, another alternative is proposed that allows education of consumers to begin sooner, using "start-up" educational funding approved early in the process by the Commission as a restructuring transition cost.

The new alternative proposes the schedule in Table 7-4. Under that schedule the CEP group is to file, within its first application, a proposal for start-up funding including details on how that funding would be used. Any additional consumer education funding that is needed would then be addressed in the second application. Under this alternative, the initial education efforts would not have to wait until approval of that second application.

Table 7-4. Proposed CEP Timeline #3

Date	Activity
1997: 1/15	CEP Group files a Consumer Education Application, including vendor recommendation and a "start-up" funding request, in anticipation of CPUC decisions on both the August 30th and October 30th DAWG reports.
2/15	Protests Due
3/31	CPUC Decision
4/15	Vendor selected and CEP process begins
6/1	CEP completed and submitted to CPUC for approval
7/1	Comments on the CEP by stakeholders due
7/1	Education begins with "start-up" activities
8/15	Commission approval of the CEP and authorization of funding
9/15	Balance of CEP education begins

A modest variation to this alternative would have the Commission, in response to this report, preapprove the amount of $10 million as start-up funding for education efforts to begin by July 1, 1997. In this case, the first filing of the CEP Group would take this amount as given and offer a proposal for its use.

The Commission needs to decide among these alternative schedules and processes for determining implementation funding, or suggest another alternative that reasonably accommodates its interest in educating consumers in adequate time to allow for direct access by January 1, 1998. Because the first proposed date of December 15, 1996 (see Table 7-3) for a joint utility application is fast approaching, the Commission may want to address these scheduling issues prior to rendering a decision on the other issues of this report.